

In the Matter Of:

AMERICAN COUNCIL OF THE BLIND OF IN, ET AL.

-v-

IN ELECTION COMMISSION, ET AL.

Bradley King

December 16, 2021

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16 Defendants.)																					
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18 The videoconferenced 30(b)(6) deposition of																					
19 the Indiana Election Division upon oral examination of																					
20 BRADLEY KING, a witness produced and sworn remotely by																					
21 me, Michele K. Gustafson, CRR-RPR, Notary Public in																					
22 and for the County of Marion, State of Indiana, taken																					
23 on behalf of the Plaintiffs on December 16, 2021, at																					
24 10:00 a.m., pursuant to the Federal Rules of Civil																					
25 Procedure.																					
26																					
27 STEWART RICHARDSON DEPOSITION SERVICES																					
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30 ALSO PRESENT: Jerry Bonnet (by Zoom)																							
31 Valerie Warycha (by Zoom)																							
32 Julia Robaidek (by Zoom)																							
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34																							
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<p style="text-align: right;">Page 5</p> <p>1 THE REPORTER: My name is Michele Gustafson, 2 an associate of Stewart Richardson Deposition 3 Services, located at One Indiana Square, 4 Suite 2425, Indianapolis, Indiana. Today's date is 5 December 16, 2021. The time is 10:00 a.m. This 6 deposition is being held via Zoom. The deponent's 7 name is Bradley King. 8 Will counsel please identify themselves and 9 any persons present with you for the record. 10 MS. ABSHIRE: Courtney Abshire on behalf of 11 Defendants. We also have Jerry Bonnet from the 12 Secretary of State's office present and 13 Valerie Warycha, W-a-r-y-c-h-a, who is co-general 14 counsel of the Election Division. Caryn Szyper, 15 C-a-r-y-n, S-z-y-p-e-r, will be joining in a little 16 bit. 17 MS. BRANDT-YOUNG: So sorry. Courtney, it's a 18 little difficult to hear you. 19 MS. ABSHIRE: Is this better? 20 MS. BRANDT-YOUNG: Yes. Thank you. 21 MS. ABSHIRE: I'll sit closer to the mic when 22 I talk. 23 MS. BRANDT-YOUNG: Thank you. 24 So for the plaintiffs we have 25 Christina Brandt-Young, Disability Rights</p>	<p style="text-align: right;">Page 7</p> <p>1 Have you ever had your deposition taken before? 2 A Yes, I have been deposed before. 3 Q How many times? 4 A I would believe about three over the years. 5 Q In that case you know that there are some 6 guidelines that we generally use in order to make 7 these conversations effective. One of them is that 8 if I ask a question, I need you to give a verbal 9 response and not a nod or a shake of the head -- 10 A Certainly. 11 Q -- so that the court reporter can capture what 12 you're doing. It's important that we not talk over 13 each other at the same time. Again, the court 14 reporter needs to be able to capture what is being 15 said. If you don't understand a question that I've 16 asked you, please ask me to clarify. If you need a 17 break at any time, by all means, we'll take one. 18 We'll answer whatever question is on the table and 19 then we'll take a break. 20 Are you in the attorney general's offices 21 today? 22 A We're physically in the attorney general's office, 23 yes. 24 Q And can you tell me for the record again who's with 25 you in the room?</p>
<p style="text-align: right;">Page 6</p> <p>1 Advocates, and with me are some colleagues. 2 MR. CRISHON: Tom Crishon from 3 Indiana Disability Rights. 4 MS. KOLIC: Jelena Kolic from 5 Disability Rights Advocates. 6 MS. BICHELL: Rosa Lee Bichell from 7 Disability Rights Advocates. 8 THE REPORTER: Sir, if you can raise your 9 right hand for me, please. 10 BRADLEY KING 11 having been first duly sworn to tell the truth, the 12 whole truth, and nothing but the truth took the stand 13 and testified as follows: 14 MS. BRANDT-YOUNG: All right. So I believe 15 we're ready to go on the record if we're not 16 already yet. 17 THE REPORTER: We are. 18 MS. BRANDT-YOUNG: Great. 19 DIRECT EXAMINATION 20 BY MS. BRANDT-YOUNG: 21 Q Mr. King, thank you for being here today. We are 22 very pleased to talk to you and learn about the 23 important work that you do. As you know, my name 24 is Christina Brandt-Young, and I'm an attorney with 25 Disability Rights Advocates for the plaintiffs.</p>	<p style="text-align: right;">Page 8</p> <p>1 A Jerry Bonnet who's been identified earlier, 2 Valerie Warycha, and Courtney Abshire. Those three 3 individuals are with me. 4 Q Anyone else? 5 A No, no one else is with me. 6 Q We need to note for the record that this deposition 7 is being taken remotely via Zoom. I can see 8 Mr. King's head and shoulders and I assume that 9 Mr. King can see mine. The camera does not capture 10 anyone else in the room with Mr. King. So just to 11 be perfectly thorough, we just want to be clear 12 that no one in the room is coaching the witness, 13 everyone in the room promises not to make signals 14 or pass notes to the witness during his testimony. 15 Of course, everybody has a right to be there and to 16 observe, but no one has a right to try and 17 influence the testimony while it's happening. 18 Do you understand that that's the rule, sir? 19 A I fully understand that. Thank you. 20 Q Thank you. Do you have any documents in the room 21 with you today? 22 A There are documents in the room today that are 23 items that were filed with regard to the litigation 24 at hand, the requests for information, the notice 25 of deposition, etc. That, I believe, is the</p>

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<p style="text-align: right;">Page 9</p> <p>1 principal documents that are in the room. I think</p> <p>2 we have the larger documents that were responsive</p> <p>3 to the discovery requests available by e-mail.</p> <p>4 Q Are any of them within your sight right now?</p> <p>5 A Yes, the first I mentioned, the notice of</p> <p>6 deposition and related filings in this litigation.</p> <p>7 Q So, again, because this deposition is being taken</p> <p>8 remotely and because I can only see you from the</p> <p>9 shoulders up, I'm going to need to ask you not to</p> <p>10 refer to any documents while you're testifying with</p> <p>11 me without us discussing it first. If you feel</p> <p>12 like you need to refer to a document in order to</p> <p>13 give an accurate answer, please let me know.</p> <p>14 Please tell me which document would refresh your</p> <p>15 recollection. Hopefully it's a document that I</p> <p>16 also have and so I can read along with it just as</p> <p>17 you do.</p> <p>18 Will you do that for me?</p> <p>19 A I certainly will do that.</p> <p>20 Q Great. Thank you very much. At the current time</p> <p>21 if you wouldn't mind placing any documents in a</p> <p>22 pile that's beyond your sight, we'd be grateful.</p> <p>23 MS. ABSHIRE: I'm going to keep a copy of the</p> <p>24 notice of deposition within my sight. Is that</p> <p>25 acceptable to you?</p>	<p style="text-align: right;">Page 11</p> <p>1 A Oh, no. I'm sorry. I didn't understand the</p> <p>2 question. I did not testify at a trial in that</p> <p>3 case.</p> <p>4 Q What was the deposition before that one?</p> <p>5 A That was even more distant in the past. It was</p> <p>6 with regard, again, to the constitutionality of an</p> <p>7 Indiana statute with regard to referenda on</p> <p>8 riverboat gambling and the use of population</p> <p>9 parameters in statutes. I believe I actually</p> <p>10 testified at the trial as an expert witness as</p> <p>11 opposed to a deposition, but that would have been</p> <p>12 in approximately 1996.</p> <p>13 Q And what was the deposition before that one?</p> <p>14 A It's not immediately coming to mind. Again, it</p> <p>15 would have been in the 1990s, I imagine, but I'm</p> <p>16 sorry I can't be any more precise than that.</p> <p>17 Q Thank you. What did you do in preparation for</p> <p>18 today's deposition?</p> <p>19 A I reviewed a number of documents. Of course, the</p> <p>20 various pleadings that were filed in this case, the</p> <p>21 interrogatories and responses, along with the</p> <p>22 documents, such as the publications made by the</p> <p>23 Election Division that address some of the topics</p> <p>24 of the litigation at hand, as well as statistical</p> <p>25 reports from our Statewide Voter Registration</p>
<p style="text-align: right;">Page 10</p> <p>1 MS. BRANDT-YOUNG: Yes, Counselor, that's</p> <p>2 fine.</p> <p>3 MS. ABSHIRE: Thank you, Christina.</p> <p>4 Q So we mentioned that you've had your deposition</p> <p>5 taken about three times. Was all that in your</p> <p>6 capacity with the Indiana Election Division or on</p> <p>7 behalf of some other person or entity?</p> <p>8 A It was entirely on behalf of the Indiana Election</p> <p>9 Division.</p> <p>10 Q What was the most recent one? When did that</p> <p>11 happen?</p> <p>12 A That was many years ago now. Well, the math is a</p> <p>13 little bit amazing when you calculate it. I would</p> <p>14 say it was roughly fifteen years ago as part of a</p> <p>15 lawsuit challenging the constitutionality of an</p> <p>16 Indiana election statute.</p> <p>17 Q What was the topic of the statute?</p> <p>18 A This was the Indiana photo identification law that</p> <p>19 was enacted in 2005.</p> <p>20 Q Did that case ever produce any trial?</p> <p>21 A Yes. It was appealed ultimately to the</p> <p>22 U.S. Supreme Court, which rendered a decision in</p> <p>23 that matter.</p> <p>24 Q I'm sorry, sir. What I meant was did you testify</p> <p>25 at a trial in that case?</p>	<p style="text-align: right;">Page 12</p> <p>1 System regarding absentee voting in particular. I</p> <p>2 think that's a good general description.</p> <p>3 Q I'm going to take a moment to ask a question of</p> <p>4 your counsel, if you don't mind.</p> <p>5 MS. BRANDT-YOUNG: Ms. Abshire, are these</p> <p>6 documents that have all been provided to Plaintiffs</p> <p>7 in discovery?</p> <p>8 MS. ABSHIRE: As far as I know, Christina,</p> <p>9 it's all been provided in discovery. If you come</p> <p>10 up on something that has not been provided, just</p> <p>11 signal that to me if you think that there's</p> <p>12 something we haven't provided that he's referenced.</p> <p>13 MS. BRANDT-YOUNG: So Plaintiffs will do their</p> <p>14 best. We think that Defendants are in the better</p> <p>15 position to know. So I'll place a request on the</p> <p>16 record at this time. Anything that this witness</p> <p>17 used to prepare for this deposition that hasn't</p> <p>18 already been provided in discovery, we request it</p> <p>19 now.</p> <p>20 Q In particular, sir, the statistical reports in the</p> <p>21 statewide system about absentee voting, how many</p> <p>22 pages did those statistical reports encompass?</p> <p>23 A A relatively small number. These were reports</p> <p>24 relating to the most recent general elections and</p> <p>25 provided statewide information regarding the number</p>

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<p style="text-align: right;">Page 13</p> <p>1 of votes cast and then the number of votes cast by 2 various absentee methods. So I would say 3 approximately six pages. 4 Q In particular, that document doesn't sound familiar 5 to me. 6 MS. ABSHIRE: Christina, we did provide that 7 in discovery. It's the absentee voting reports in 8 response to the interrogatories where we provided 9 the business interrogatory records. 10 MS. BRANDT-YOUNG: Great. Do you happen to 11 know the Bates numbers off the top of your head? 12 MS. ABSHIRE: If you give me a moment, I can 13 look. 14 MS. BRANDT-YOUNG: Thank you. They were 15 provided fairly recently and so we do not have them 16 memorized yet. Let's put it that way. 17 Q What do you remember, sir, about those statistics? 18 How many people voted absentee in the 2020 general 19 election? And do I have that right? Are those the 20 reports we're speaking of? 21 A Yes, that's the reports we're speaking of. And I'm 22 sorry. That was with reference to 2020? Did I 23 understand the question correctly? 24 Q I believe so. 25 A All right. Well, there were 2 million votes cast</p>	<p style="text-align: right;">Page 15</p> <p>1 correct that the options would be, as you said, 2 traveling board is one, fax is two, e-mail is 3 three, paper ballot would be a fourth option? Is 4 that right? 5 A If I can ask you to clarify what you mean by paper 6 ballot. There are two types of situations where 7 paper ballots as we can colloquially refer to them 8 can be used. One is transmittal through the mail 9 and the other is voting in person prior to election 10 day, which under Indiana law, even though the terms 11 early voting is used as slang, it's, in fact, 12 casting an absentee ballot in person. 13 Q Yes, this is tricky, isn't it. So to be clear, 14 casting an absentee ballot in person before 15 election day is considered absentee voting under 16 the Indiana Code Chapter 3. Do I have that right? 17 A Yes, that is correct. It is not actually voting. 18 It's casting an absentee ballot that will be 19 tabulated, canvassed on election day. 20 Q Can you clarify for me, sir? I understand the 21 early voting terminology can make it somewhat 22 confusing. Can anyone vote before election day in 23 person on a standard voting machine in Indiana? 24 A Anyone can cast an absentee ballot before election 25 day, so-called early voting. There are options</p>
<p style="text-align: right;">Page 14</p> <p>1 overall and the absentee vote number that I focused 2 on were the ones concerning voters who cast ballots 3 either by traveling board or by fax or e-mail. I 4 recall that the absentee percentage of that 5 2 million votes cast was significantly higher than 6 usual because of the unique circumstances that 7 accompanied the 2020 election. I believe it was 8 approximately 40 percent of that overall total. 9 Q I believe you said before -- correct me if I'm 10 wrong -- that you looked at a breakdown and I'm 11 wondering if that breakdown included the methods of 12 absentee voting within the 40 percent absentee 13 voting that you mentioned. 14 A Yes, it did provide that breakdown. 15 Q Do you recall what it is? 16 A With regard to the particular elements I mentioned, 17 a fairly small number of voters than normal voted 18 by way of traveling board. They've consistently 19 been over the years in the range of 5 percent, and 20 in this case I think it actually reached 5 percent. 21 And with regard to voting by fax and e-mail, I 22 recall that the fax were almost nonexistent, 23 whereas by e-mail reached approximately 1 percent 24 of the absentee ballots casted. 25 Q And then further within absentee voting, am I</p>	<p style="text-align: right;">Page 16</p> <p>1 that are available to counties with regard to 2 whether that would be providing an absentee ballot 3 cast using a voting system. In most cases that 4 would be true. There would be very few cases in 5 the 2020 general election where a literal paper 6 ballot would be used that's not part of a voting 7 system that tabulates the absentee ballot at a 8 later stage. 9 MS. ABSHIRE: Counsel, I have the Bates 10 numbers of the 2020 reports you were asking for a 11 moment ago. Would you like those now? 12 MS. BRANDT-YOUNG: I'm sorry. Who's speaking? 13 MS. ABSHIRE: This is Courtney. 14 MS. BRANDT-YOUNG: I didn't hear a word of 15 that, Courtney. Can you please repeat. 16 MS. ABSHIRE: Sorry about that. I have the 17 Bates numbers for -- 18 MS. BRANDT-YOUNG: No. Sorry. Can I get you 19 to reposition yourself in front of a microphone a 20 little more? 21 MS. ABSHIRE: Is this better? 22 MS. BRANDT-YOUNG: Beautiful. Thank you. 23 Please go ahead. 24 MS. ABSHIRE: I have the Bates numbers for the 25 2020 reports you asked for. They begin with</p>

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<p style="text-align: right;">Page 17</p> <p>1 ACBI001916.</p> <p>2 MS. BRANDT-YOUNG: Thank you very much,</p> <p>3 Courtney. I appreciate it.</p> <p>4 Q All right. Mr. King, so just in terms of getting</p> <p>5 sort of our category groups around absentee voting</p> <p>6 in Indiana correct. I'm going to distinguish</p> <p>7 between absentee voting that is done early in a</p> <p>8 polling place and absentee voting that is done</p> <p>9 early before election day, probably not usually on</p> <p>10 election day, although there are probably a number</p> <p>11 of people who probably could.</p> <p>12 If we distinguish between in the polling place</p> <p>13 and not in the polling place, the options for</p> <p>14 absentee voting not in the polling place include</p> <p>15 traveling board, fax ballot, e-mail ballot, paper</p> <p>16 ballot through the mail. Would those also include</p> <p>17 a paper ballot that a voter could receive through</p> <p>18 the mail, fill out at home, and then physically</p> <p>19 walk into an election office and drop off?</p> <p>20 A Yes, that would include that case.</p> <p>21 Q And then for absentee voting happening in an</p> <p>22 elections office, the options there in some</p> <p>23 counties consist of you can vote on a voting</p> <p>24 machine; is that right?</p> <p>25 A That's correct.</p>	<p style="text-align: right;">Page 19</p> <p>1 for this?</p> <p>2 A In the absentee context it would be an election</p> <p>3 office. It would generally be in most counties the</p> <p>4 circuit court clerk or a similar county entity. It</p> <p>5 could be a so-called satellite office that's made</p> <p>6 available before election day but is not considered</p> <p>7 a polling place. A polling place is a term that's</p> <p>8 restricted to election day itself.</p> <p>9 Q For purposes of this deposition and for purposes of</p> <p>10 clarity, I'm going to call those places where</p> <p>11 people cast absentee ballots in a location run by a</p> <p>12 government entity as elections offices. If there's</p> <p>13 a better word generically for that term, don't</p> <p>14 hesitate to tell me what it is. And we'll move on.</p> <p>15 So in terms of what you were telling me about,</p> <p>16 statistical reports in the statewide system, we're</p> <p>17 actually interested in the other category. We're</p> <p>18 interested in the category of absentee ballots not</p> <p>19 cast in an election office but that are somehow</p> <p>20 sent directly to the voter. The terminology that</p> <p>21 we have been using for this is absentee vote from</p> <p>22 home, to distinguish it from absentee voting or</p> <p>23 polling place, although we acknowledge that you</p> <p>24 could send a ballot to someone's home and they</p> <p>25 could take it to the election office in order to</p>
<p style="text-align: right;">Page 18</p> <p>1 Q Would that in the office option also include paper</p> <p>2 ballots that are already there that people could</p> <p>3 pick up and fill out in the office not on a voting</p> <p>4 machine but by hand?</p> <p>5 A Yes, that's correct. There are different types of</p> <p>6 voting systems that are used in Indiana in</p> <p>7 different counties. In counties that use direct</p> <p>8 record electronic screens, for example, the</p> <p>9 absentee ballot in this scenario could be cast on</p> <p>10 that voting system. It would not involve the use</p> <p>11 of paper by the voter. In counties that use what</p> <p>12 are generally referred to as optical scan ballots,</p> <p>13 the voter would be provided with the absentee</p> <p>14 ballot, would mark it, the ballot would then be</p> <p>15 sealed and tabulated later on election day.</p> <p>16 Q All right. I think I get it. Please don't</p> <p>17 hesitate to correct me in the future around this</p> <p>18 because we want to have an accurate record.</p> <p>19 A Certainly.</p> <p>20 Q So we were speaking previously about the</p> <p>21 statistical reports and you said that in terms of</p> <p>22 all absentee ballots cast and that includes ballots</p> <p>23 sent to someone's home and also ballots cast in an</p> <p>24 elections office. Is it an elections office? Is</p> <p>25 it polling place? What's the proper terminology</p>	<p style="text-align: right;">Page 20</p> <p>1 physically turn that paper ballot in.</p> <p>2 A That's correct.</p> <p>3 Q So we're going to call this absentee vote from</p> <p>4 home. Is there some terminology for what the State</p> <p>5 calls it that I should be using instead?</p> <p>6 A Indiana generally does not use the phrase vote from</p> <p>7 home or vote at home, to say in part because often</p> <p>8 absentee ballots are transmitted by mail to</p> <p>9 locations other than the person's home if they are</p> <p>10 out of the jurisdiction and other scenarios. So we</p> <p>11 focus more on the method as opposed to the location</p> <p>12 of receipt.</p> <p>13 Q Well, so is there any terminology that you use for</p> <p>14 that to distinguish it from absentee voting</p> <p>15 happening in an elections office?</p> <p>16 A We would say absentee by mail or absentee by the</p> <p>17 other methods we've identified.</p> <p>18 Q So today I'm going to do my best to say absentee</p> <p>19 vote by mail, and you and I will understand that</p> <p>20 that actually includes traveling board, fax,</p> <p>21 e-mail, and United States postal mail.</p> <p>22 A Yes, I understand using the broader category to</p> <p>23 include those methods.</p> <p>24 Q Great. Now we're cooking. So finally to find our</p> <p>25 way back, traveling board is 5 percent, fax was</p>

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<p style="text-align: right;">Page 21</p> <p>1 somewhat nonexistent, e-mail was 1 percent. What</p> <p>2 was the postal mail as an overall percentage of</p> <p>3 vote by mail?</p> <p>4 A As I indicated earlier, I may need to refresh my</p> <p>5 recollection by looking at the documents we've</p> <p>6 pulled up. It was exceptionally higher in 2020</p> <p>7 than in previous cycles. My recollection is</p> <p>8 40 percent, but I can with your consent check the</p> <p>9 document to confirm the exact number.</p> <p>10 Q So when you say that the 2 million votes cast,</p> <p>11 40 percent were absentee in 2020, what that means</p> <p>12 is 40 percent were absentee and vote by mail?</p> <p>13 A I'm sorry. Could you repeat that?</p> <p>14 Q I thought you said earlier that of 2 million votes</p> <p>15 cast in 2020, 40 percent of them were cast</p> <p>16 absentee. Is that right?</p> <p>17 A That's correct.</p> <p>18 Q And is that absentee vote by mail, absentee in an</p> <p>19 elections office, or both?</p> <p>20 A I was using the term inclusively, so all absentee</p> <p>21 ballots of any type of delivery.</p> <p>22 Q What percent were cast absentee by U.S. postal</p> <p>23 mail, if you know?</p> <p>24 A And that's the percentage I wanted to ask if we</p> <p>25 could check the document to refresh my</p>	<p style="text-align: right;">Page 23</p> <p>1 A That would be a fair statement.</p> <p>2 Q Okay. Thank you. So you said that in preparation</p> <p>3 for today's deposition you reviewed a number of</p> <p>4 documents and we've discussed some of those. What</p> <p>5 else did you do in preparation for today's</p> <p>6 deposition?</p> <p>7 A Viewed records of Indiana Election Commission</p> <p>8 minutes, which are available online and I believe</p> <p>9 have been provided. I discussed, of course,</p> <p>10 matters with my counsel in preparation for this.</p> <p>11 Reviewed, as I said, the publications that the</p> <p>12 Election Division publishes containing information</p> <p>13 relevant to this regard. I believe that covers the</p> <p>14 extent of it.</p> <p>15 Q When you said that you reviewed the IEC minutes</p> <p>16 which are available online, were there any</p> <p>17 particular minutes that you were looking for?</p> <p>18 A I looked at the minutes for March 2020 and</p> <p>19 April 2020 which were referenced in I believe the</p> <p>20 interrogatories, so that was my particular focus</p> <p>21 with regard to those minutes.</p> <p>22 Q Did you talk to anyone else besides your attorneys</p> <p>23 in preparation for this deposition?</p> <p>24 A No, I don't believe I did.</p> <p>25 MS. BRANDT-YOUNG: All right. So I am asking</p>
<p style="text-align: right;">Page 22</p> <p>1 recollection.</p> <p>2 Q I hope that later today we will.</p> <p>3 A Oh, all right.</p> <p>4 Q Great.</p> <p>5 A Then I would say it was a significant percentage of</p> <p>6 the overall total of absentee ballots.</p> <p>7 Q When you say significant, tell me more what you</p> <p>8 mean by that.</p> <p>9 A A majority would have been cast through the mail.</p> <p>10 Q Was that different from usual?</p> <p>11 A It's different than usual in terms of degree.</p> <p>12 There was more absentee voting by mail in</p> <p>13 November 2020's general election than in previous</p> <p>14 ones and fewer votes cast in person at the county</p> <p>15 office, primarily I believe because of COVID</p> <p>16 concerns and restrictions.</p> <p>17 Q When you say that there were fewer votes cast at</p> <p>18 the office, do you mean from an absentee</p> <p>19 perspective or overall?</p> <p>20 A I'm, again, in the absentee context. I'm not</p> <p>21 referring to the actual election day experience but</p> <p>22 to the absentee process.</p> <p>23 Q So fair to say that a number of people who you</p> <p>24 would have expected to vote absentee in an election</p> <p>25 office voted absentee by mail instead?</p>	<p style="text-align: right;">Page 24</p> <p>1 that the record reflect that we're marking as</p> <p>2 Plaintiffs' Exhibit 1 in this deposition a file</p> <p>3 entitled ACBI IED 30.b.6 notice 12.14.21. I'm</p> <p>4 going to attempt to share my screen with it.</p> <p>5 Q Sir, can you see that there's a document that</p> <p>6 starts United States District Court at the top?</p> <p>7 A Yes, I can.</p> <p>8 Q Great.</p> <p>9 MS. BRANDT-YOUNG: I'm going to note for</p> <p>10 everyone in the room that we e-mailed all these</p> <p>11 exhibits to opposing counsel this morning. So if</p> <p>12 anyone in the room would like to open the document</p> <p>13 and follow along, you should be able to do that.</p> <p>14 Q Sir, likewise, if it would assist you to do that,</p> <p>15 to open up the document on the screen so that you</p> <p>16 can scroll through it a little bit, Plaintiffs</p> <p>17 would consent to that. We don't actually plan to</p> <p>18 do a whole bunch with this document other than to</p> <p>19 say that this document is entitled Notice of</p> <p>20 Deposition of Indiana Election Division. It</p> <p>21 consists of seven pages and it contains a schedule</p> <p>22 with topics for the deposition.</p> <p>23 Sir, have you ever seen this before?</p> <p>24 A Yes, I have.</p> <p>25 Q Aside from what I've just said, can you explain</p>

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<p style="text-align: right;">Page 25</p> <p>1 your understanding of what this document is?</p> <p>2 A It's a filing that requires my testimony in this</p> <p>3 matter on the topics that are indicated in the</p> <p>4 deposition.</p> <p>5 Q Thank you. So it's your understanding that you're</p> <p>6 testifying today pursuant to this notice?</p> <p>7 A That's correct.</p> <p>8 Q And you've been designated by the Indiana Election</p> <p>9 Division to speak on its behalf today?</p> <p>10 A I understand that I've been designated by the</p> <p>11 attorney general's office as counsel to speak on</p> <p>12 behalf of the Indiana Election Division.</p> <p>13 Q Fair to say you're here testifying for the</p> <p>14 Indiana Election Division today?</p> <p>15 A The Indiana Election Division is a complex entity.</p> <p>16 It will take a moment to describe.</p> <p>17 Q Sorry. I don't mean to interrupt you. It's just</p> <p>18 you're testifying for them and not for you. Do you</p> <p>19 understand that?</p> <p>20 A I understand I'm speaking on behalf of the</p> <p>21 Election Division as an entity, yes.</p> <p>22 Q Thank you. How many hours did you spend preparing</p> <p>23 for today's deposition?</p> <p>24 A I would estimate approximately seven to</p> <p>25 eight hours.</p>	<p style="text-align: right;">Page 27</p> <p>1 A Okay, yes. I'm not using my own laptop in this</p> <p>2 case, so . . .</p> <p>3 Q So I'll stop sharing that document for now.</p> <p>4 All right. During this deposition do you</p> <p>5 agree not to communicate via text or IM or e-mail</p> <p>6 or other forms of outside communication while</p> <p>7 you're on the record?</p> <p>8 A I do.</p> <p>9 Q Thank you. Do you agree not to look at documents</p> <p>10 or other papers while you're on the record besides</p> <p>11 those introduced by screen share?</p> <p>12 A I do.</p> <p>13 Q Great. It also occurs to me as to the 30(b)(6)</p> <p>14 notice itself if you have a paper copy with you</p> <p>15 that there may be times when referring to the paper</p> <p>16 copy may be more efficient. Again, we'll deal with</p> <p>17 that when we get there. Just let me know what you</p> <p>18 need. Okay?</p> <p>19 A I understand. I will.</p> <p>20 Q Thank you. If you don't hear or understand a</p> <p>21 question, tell me. Okay?</p> <p>22 A Certainly.</p> <p>23 Q Great. Sometimes I am going to interrupt you, and</p> <p>24 it's for the purpose of saving time. We have a</p> <p>25 limited time together and, although it's rude, I</p>
<p style="text-align: right;">Page 26</p> <p>1 Q And out of the entire Indiana Election Division,</p> <p>2 the only people that you spoke to were attorneys?</p> <p>3 Do I understand that right?</p> <p>4 A That is correct. I've only spoken with</p> <p>5 Valerie Warycha who serves as my general counsel</p> <p>6 within the Election Division.</p> <p>7 Q And you understand that today you're testifying</p> <p>8 under oath the same as you would if we were in a</p> <p>9 court with a judge present; is that right?</p> <p>10 A I do understand that.</p> <p>11 Q Thank you. So as you can see, during the</p> <p>12 deposition I will be introducing some exhibits,</p> <p>13 which will appear on your screen and hopefully your</p> <p>14 attorney's screen via the exhibit share platform</p> <p>15 that we're using today. If you would like to</p> <p>16 scroll through a document, I believe that I can</p> <p>17 actually share the screen with you and give you</p> <p>18 control of the document so that you can scroll it</p> <p>19 and draw my attention to things if necessary. So</p> <p>20 if we need to do that, we'll do it. Do you see a</p> <p>21 screen share feature?</p> <p>22 A I don't know that I do.</p> <p>23 Q I tell you what. If you find that you want to</p> <p>24 scroll through something to show me, then we'll get</p> <p>25 there when we get there. Is that fair?</p>	<p style="text-align: right;">Page 28</p> <p>1 know I'm going to do it. So I apologize in advance</p> <p>2 for that. Sometimes I will also ask you to repeat</p> <p>3 yourself. Again, it's for the purpose of saving</p> <p>4 time, it helps me understand, and I apologize in</p> <p>5 advance.</p> <p>6 I'm asking you to use your best recollection</p> <p>7 today in response to my questions. If you don't</p> <p>8 remember the exact words of a conversation, you</p> <p>9 have to give me the gist and the substance even if</p> <p>10 you don't have perfect recall. Will you do that?</p> <p>11 A Yes, I will.</p> <p>12 Q You shouldn't guess or speculate about anything,</p> <p>13 but I am entitled to the best estimate of things</p> <p>14 that you can give. So the time-tested example for</p> <p>15 this when we're doing these over Zoom is that if I</p> <p>16 ask you to estimate the length of the table where</p> <p>17 you're sitting, you have a basis for that and you</p> <p>18 should try. If I ask you to estimate the length of</p> <p>19 the table where I'm sitting, you've never seen it,</p> <p>20 you can't. Does that distinction make sense?</p> <p>21 A It does.</p> <p>22 Q Will you give me a best estimate when you need to?</p> <p>23 A Yes, I will.</p> <p>24 Q Thank you. If at any time during this deposition</p> <p>25 you think of a question that is in addition to</p>

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<p style="text-align: right;">Page 29</p> <p>1 something that I asked and that you answered</p> <p>2 before, please let me know and we'll just go back</p> <p>3 to it. We want to capture what it is that you know</p> <p>4 and what's important for us to understand today.</p> <p>5 Is that okay?</p> <p>6 A Yes, that's acceptable.</p> <p>7 Q Great. At any point if you're having issues with</p> <p>8 the audio, let me know. Is that okay?</p> <p>9 A Certainly.</p> <p>10 Q Great. Is there any reason you can't give full,</p> <p>11 complete, and accurate testimony today?</p> <p>12 A No, there is no reason that I cannot give testimony</p> <p>13 to the best of my ability and recall.</p> <p>14 Q All right. So can you please tell us your current</p> <p>15 job title.</p> <p>16 A I am co-director of the Indiana Election Division</p> <p>17 of the office of the Secretary of State.</p> <p>18 Q And how long have you been in that position?</p> <p>19 A Since February of 2002.</p> <p>20 Q Please explain what you do in your job.</p> <p>21 A The post of co-director of the Division has a</p> <p>22 number of responsibilities. First involves</p> <p>23 supervising a small staff. My staff consists of</p> <p>24 four individuals besides myself. There are a total</p> <p>25 of ten individuals who are serving in the</p>	<p style="text-align: right;">Page 31</p> <p>1 of my job duties.</p> <p>2 Q Well, it is and I can tell we're going to come back</p> <p>3 to it. Are there any duties in your role related</p> <p>4 to disability access?</p> <p>5 A There are. Among the specific ones, Indiana law</p> <p>6 requires in most years a conference of county-level</p> <p>7 election administrators and one of the topics</p> <p>8 required by statute to be addressed at that</p> <p>9 conference concerns the federal and state legal</p> <p>10 requirements regarding voters with disabilities and</p> <p>11 how best to serve those voters. Again, preparing</p> <p>12 material and responding to inquiries in that regard</p> <p>13 are an important part of the tasks that I perform</p> <p>14 regarding disability information.</p> <p>15 Q So do I understand you correctly that part of your</p> <p>16 job duties are as co-director of the organization</p> <p>17 to host an annual conference for the county boards</p> <p>18 of elections on compliance with state and federal</p> <p>19 disability law?</p> <p>20 A That is correct.</p> <p>21 Q Why does your agency include that content in the</p> <p>22 annual conference?</p> <p>23 A The short answer is that it is a statutory</p> <p>24 requirement adopted by the Indiana General</p> <p>25 Assembly. Beyond that, it is an important topic</p>
<p style="text-align: right;">Page 30</p> <p>1 Indiana Election Division. The role that I perform</p> <p>2 and the tasks I perform are shared and delegated to</p> <p>3 several of those individuals.</p> <p>4 They primarily involve serving as an</p> <p>5 information source with regard to Indiana election</p> <p>6 requirements and procedures, responding to</p> <p>7 inquiries from any number of sources, whether they</p> <p>8 are an Indiana or county election officials who are</p> <p>9 primarily charged with actually administering the</p> <p>10 election. Statutorily the Election Division</p> <p>11 assists a separate body, the Indiana Election</p> <p>12 Commission, and assists the Secretary of State, a</p> <p>13 separately-elected state constitutional officer, in</p> <p>14 the performance of election duties, which include</p> <p>15 topics ranging from maintaining our Statewide Voter</p> <p>16 Registration System, administering campaign finance</p> <p>17 enforcement actions, generally as I said providing</p> <p>18 information about the mechanics of the process for</p> <p>19 candidates or individuals who are interested in</p> <p>20 participating in the process or media who wish to</p> <p>21 report regarding its requirements and their</p> <p>22 application in a particular situation.</p> <p>23 I think that aside from what all agency heads</p> <p>24 do, keeping track of budgets and human resource</p> <p>25 matters, that's a fairly comprehensive description</p>	<p style="text-align: right;">Page 32</p> <p>1 for election administrators to be aware of, in my</p> <p>2 opinion, so that they can provide the best possible</p> <p>3 service to the taxpayers who include people who are</p> <p>4 voters with disabilities.</p> <p>5 Q So I understand you have an Indiana state duty to</p> <p>6 hold this conference. Is that right?</p> <p>7 A That is correct.</p> <p>8 Q Is it an Indiana state duty to provide information</p> <p>9 about state and federal disability law?</p> <p>10 A It is not specifically with regard to matters</p> <p>11 outside of the context of elections. A broader</p> <p>12 perspective might be that with regard to polling</p> <p>13 places, Indiana law requires that those polling</p> <p>14 places, whether on election day or in the absentee</p> <p>15 voting context we discussed earlier, have to comply</p> <p>16 with the Americans with Disabilities Act</p> <p>17 requirements.</p> <p>18 Q So tell me if I've got this right. Indiana law</p> <p>19 requires that local polling places comply with the</p> <p>20 Americans with Disabilities Act as to physical</p> <p>21 access to the polling places; is that right?</p> <p>22 A That is correct.</p> <p>23 Q And does Indiana law also require that local boards</p> <p>24 of elections provide the same requirements of the</p> <p>25 Americans with Disabilities Act as to effective</p>

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<p style="text-align: right;">Page 33</p> <p>1 communication?</p> <p>2 A If I can ask you to clarify what you mean by</p> <p>3 effective communication. Are you referring to</p> <p>4 between a voter and election officials or some</p> <p>5 other context?</p> <p>6 Q That's right, between a voter and election</p> <p>7 officials.</p> <p>8 A Yes. Indiana law requires that the voter have the</p> <p>9 ability to, where desired, request assistance in</p> <p>10 certain contexts of absentee voting and voting in</p> <p>11 person.</p> <p>12 Q I'm sorry. This is one of those times I'm going to</p> <p>13 interrupt you. That actually wasn't my question</p> <p>14 about what Indiana law requires as to voter</p> <p>15 assistance without reference to the ADA. My</p> <p>16 question was you said that Indiana law incorporates</p> <p>17 the ADA as to access to polling places and I'm</p> <p>18 asking if it also incorporates the ADA as to</p> <p>19 effective communication between voters and their</p> <p>20 election officials.</p> <p>21 MS. ABSHIRE: Objection just on the basis of</p> <p>22 vagueness.</p> <p>23 A I will answer that to the best of my ability, and</p> <p>24 that's to say that Indiana law contains provisions</p> <p>25 that recognize other aspects of the Americans with</p>	<p style="text-align: right;">Page 35</p> <p>1 whole slew of topics but also covers, as you said,</p> <p>2 state and federal disability law. That annual</p> <p>3 conference isn't the only place where the</p> <p>4 Indiana Election Division provides guidance to</p> <p>5 counties about state and federal disability law,</p> <p>6 I'm sure. Other than the conference, what are some</p> <p>7 of the other major vectors or methods that the IED</p> <p>8 uses to provide guidance to counties about state</p> <p>9 and federal disability law?</p> <p>10 A Primarily through our website, which is accessible</p> <p>11 to all members of the public who have access to the</p> <p>12 internet, but in particular through our</p> <p>13 Election Administrator's Portal, which is a special</p> <p>14 area that sets forth both publications that we</p> <p>15 provide with regard to disability matters and also</p> <p>16 links to other sites that may be useful in</p> <p>17 providing additional details.</p> <p>18 Q Any other ways that the IED provides guidance to</p> <p>19 counties about state and federal disability law?</p> <p>20 A I think that in general covers it. We certainly</p> <p>21 have many meetings with county election officials</p> <p>22 throughout the year in addition to our annual</p> <p>23 conference; we routinely attend meetings twice a</p> <p>24 year in both the northern and southern parts of</p> <p>25 Indiana to talk with circuit court clerks; we</p>
<p style="text-align: right;">Page 34</p> <p>1 Disabilities Act beyond physical access to polling</p> <p>2 place. For example, it requires that a magnifier</p> <p>3 be available for individuals who are voting at a</p> <p>4 polling location or early voting location as one</p> <p>5 example.</p> <p>6 Q Do you have any training relating to disability</p> <p>7 access?</p> <p>8 A I do not have any specific training, other than the</p> <p>9 knowledge that I've picked up in preparing</p> <p>10 information to convey at the conference we referred</p> <p>11 to and on other occasions with regard to the</p> <p>12 evolving requirements under the Americans with</p> <p>13 Disabilities Act when there have been revisions to</p> <p>14 change standards and requirements. But in terms of</p> <p>15 detailed training, I would say no, I have not</p> <p>16 received that.</p> <p>17 Q Fair to say that your experience with disability</p> <p>18 access rules has been sort of picked up on the job?</p> <p>19 Is that fair?</p> <p>20 A That would be largely true. I have experienced</p> <p>21 things in my personal life or in organizations that</p> <p>22 I belong to that have involved disability issues</p> <p>23 and have gained familiarity from that as well.</p> <p>24 Q Okay. So we spoke previously about the annual</p> <p>25 conference for counties, which I'm sure covers a</p>	<p style="text-align: right;">Page 36</p> <p>1 attend meetings of the Indiana Voter Registration</p> <p>2 Association, which is a group of individuals that</p> <p>3 primarily perform that task within the elections</p> <p>4 office; and in each of those cases will routinely</p> <p>5 bring the importance of compliance with disability</p> <p>6 requirements to the attention of that audience.</p> <p>7 Q Is there such a thing in Indiana as a statewide</p> <p>8 Voter Registration Guidebook?</p> <p>9 A Yes, there is.</p> <p>10 Q Who is the author of that?</p> <p>11 A The Election Division is the author of the</p> <p>12 Voter Registration Guidebook that's published</p> <p>13 annually in the years in which we have general or</p> <p>14 municipal elections.</p> <p>15 Q Is that a means of advising counties about their</p> <p>16 duties regarding state and federal disability law?</p> <p>17 A It is one means. There are other publications that</p> <p>18 go into more detail. Our Election Administrator's</p> <p>19 Manual is perhaps most comprehensive source for</p> <p>20 that information, but there are elements I think</p> <p>21 related to disability issues in the publications.</p> <p>22 Q And the IED is among the authors of the</p> <p>23 Election Administrator's Manual as well?</p> <p>24 A Yes, that's correct, that's authored by the</p> <p>25 Election Division.</p>

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<p style="text-align: right;">Page 37</p> <p>1 Q Thank you. All right. So let's go back to our 2 notice for a minute. For those following along on 3 paper, we're just going to read Topic 1 here, which 4 is, The relationship between the Defendant 5 Indiana Election Commission, Indiana Secretary of 6 State, Indiana Election Division and any 7 County Board of Elections regarding the design, 8 organization, and operation of local, state, and 9 federal elections in Indiana. 10 Do you see that, sir? 11 A Yes, I do. 12 Q Great. So are you the most knowledgeable person at 13 the Indiana Election Division about that 14 relationship? 15 A I hesitate to claim to be the most knowledgeable. 16 I will indicate that I have the longest tenure. 17 Q Is there anyone else at the agency that you think 18 knows a lot about that? 19 A There are several individuals who know a lot about 20 that. Certainly my counsel, Valerie Warycha, has 21 familiarity with this and my counterpart as 22 co-director, Angela Nussmeyer, and her counsel, 23 Matthew Kochevar, are certainly knowledgeable 24 individuals. 25 Q But you're prepared to talk for the agency about</p>	<p style="text-align: right;">Page 39</p> <p>1 the administration of the Help America Vote Act 2 with regard to the administration of the fund 3 established, the Election Assistance Enforcement 4 Fund, and has staff individuals who serve as 5 resources to ensure that the funds are properly 6 accounted for and disbursed in accordance with the 7 requirements of Indiana statute as well as 8 requirements under the Help America Vote Act and 9 the Election Assistance Commission. 10 The Secretary of State also serves as a 11 spokesperson for the elections process in many 12 forums to help educate members of the public at 13 large and speaks to county election administrators 14 in particular and various groups that have a stake 15 in the election process. 16 So I think that's a fairly comprehensive and I 17 hope reasonably succinct answer. 18 Q Thank you. That was actually quite lovely. So 19 same question for the Indiana Election Commission. 20 Can you give us a fairly succinct high-level 21 summary of the Indiana Election Commission's 22 duties? 23 A Yes. The Indiana Election Commission is a 24 four-member body that has a specific set of duties 25 that it routinely exercises. They center around</p>
<p style="text-align: right;">Page 38</p> <p>1 this topic today; is that right? 2 A I am to the best of my ability. 3 Q I hesitate to ask this because it's complicated. 4 What are the major duties of the Secretary of 5 State? I know that you could talk about that 6 probably for ten minutes without taking a breath, 7 but I'm looking for a fairly succinct answer that 8 hits the highlights. 9 A I will do my best to do that. The Secretary of 10 State is designated by Indiana Code 3-6-3.7 as the 11 chief state elections officer for almost all 12 purposes. The exception is with regard to voter 13 registration list maintenance, in which the 14 co-directors of the Election Division serve as the 15 designated officers under the National Voter 16 Registration Act. 17 The Secretary of State's duties with regards 18 to elections are, of course, ministerial, in that 19 the Secretary of State is involved in the process 20 serving as chair of the state recount commission 21 when a recount is conducted, is involved in the 22 issuance of commissions and certificates of 23 election that reflect the results of the May 24 primary election and November general elections. 25 The Secretary of State is also involved with</p>	<p style="text-align: right;">Page 40</p> <p>1 campaign finance enforcement. They also center 2 around challenges to the eligibility of candidates 3 who file to run on the ballot in the primary or 4 general election. They also can be involved in the 5 approval of precinct boundary changes that are made 6 upon proposal by the counties. 7 The Election Commission has some general 8 authority under its statute, 9 Indiana Code 3-6-4.1-12, to administer Indiana's 10 election laws and it enumerates certain additional 11 powers that it can invoke during the context of 12 either a court order or in other circumstances 13 where rule making is involved, although the 14 Election Commission has not adopted rules. We're a 15 strictly statutory, not a rule-making state. 16 Then finally the Election Commission's 17 authority to administer election laws is limited by 18 subsection (b) of that statute, which states that 19 the powers enumerated for the Commission are not to 20 be construed as depriving county election boards of 21 their responsibilities under other parts of the 22 Indiana election code. 23 Q So let me see if I've got this right. For the 24 Secretary of State, that's the chief state election 25 officer for all things except registration, they</p>

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<p style="text-align: right;">Page 41</p> <p>1 perform important ministerial duties, they take 2 care of recounts, they administer Help America Vote 3 Act funds, they do election assistance enforcement, 4 and they're a spokesperson and educator. Is all of 5 that correct? 6 A All of that's correct. 7 Q Then as to the Indiana Election Commission, they're 8 in charge of voter registration, campaign finance 9 enforcement, challenges to who's on the ballot, 10 precinct boundary changes, and enforcing the 11 election laws. Did I get that right? 12 A Almost entirely correct. The exception was the 13 opening reference to voter registration. Their 14 role in that process is very limited. The 15 co-directors of the Election Division are the 16 entities designated under the National Voter 17 Registration Act. 18 Q All right. So succinct and high-level summary of 19 the duties of the Indiana Election Division, 20 please, sir. 21 A Well, the Indiana Election Division begins with its 22 charge to assist both the Secretary of State and 23 the Indiana Election Commission in the performance 24 of their duties that we've just discussed. The 25 Indiana Election Division is perhaps best described</p>	<p style="text-align: right;">Page 43</p> <p>1 registration, it assists both the IEC and the SOS, 2 it assists the Indiana Election Commission with 3 campaign finance enforcement, it does technical 4 review of precinct boundaries, and one of its core 5 functions is to provide information to counties 6 about state and federal laws, and also prescribing 7 the forms. Do I have that right? 8 A That is all correct. Again, I would just say with 9 regard to the information source, not limited to 10 counties but to the variety of individuals I 11 mentioned earlier. 12 Q So who are the stakeholders to whom the IED must 13 provide information? 14 A Well, certainly the IED must provide information to 15 the Election Commission and to the Secretary of 16 State for those entities to comply with Indiana 17 law. The office as public servants is required to 18 be responsive as best we can with the time and 19 resources available to individuals with inquiries 20 on subjects that we can provide information or 21 opinions regarding matters when answers are not 22 clear and unambiguous. 23 Q Who would those individuals be who might make 24 inquiries? 25 A There is a panoply of individuals who would</p>
<p style="text-align: right;">Page 42</p> <p>1 as an autonomous state agency, in that we have a 2 separate structure in which we serve as 3 co-directors upon appointment by the Governor for a 4 four-year term and not at the pleasure of the 5 Secretary of State or the Election Commission. 6 The duties that we have include, as I 7 mentioned earlier, campaign finance enforcement, 8 assisting the Election Commission. Voter 9 registration with regard to our responsibilities 10 under the National Voter Registration Act. With 11 regard to the precinct boundaries I discussed, we 12 are the primary resource to assist counties in that 13 process and approve a technical review of precinct 14 boundary changes that are proposed. 15 In addition, we've talked about our primary 16 role, our I would view it as a core function, of 17 being an information source. We obviously are not 18 an adjudicative body, but we certainly provide 19 general guidance regarding Indiana election law and 20 federal laws that are pertinent to the election 21 process. And we get into the minutia, if you will, 22 of prescribing the forms that are used by the 23 individuals involved in the election process. 24 Q So tell me if I've got this right. The 25 Indiana Election Division is in charge of voter</p>	<p style="text-align: right;">Page 44</p> <p>1 ordinarily make inquiries. Common examples would 2 include members of the media who are asking for 3 information for context of reporting that they're 4 undertaking. We would receive inquiries from 5 candidates from political parties who are 6 conducting campaigns, particularly on matters such 7 as campaign finance. We would receive inquiries 8 from what I might call educational groups who might 9 want to have a particular part of the election 10 process explained to either their class or their 11 course audience. And then simply individuals, 12 private citizens who have encountered information 13 about the election process and want to know more. 14 Q Which agency or agencies in Indiana approve voting 15 systems? 16 A Voting systems are approved by the Indiana Election 17 Commission. I will add to that, if I could. When 18 I use voting system, I am referring to the 19 definition that's set forth in Indiana Code 3-5-2, 20 which is modeled on the Help America Vote Act. And 21 I make that distinction because the Secretary of 22 State is charged with the certification of 23 electronic poll books, which are not generally 24 considered to be within that definition of voting 25 systems.</p>

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<p style="text-align: right;">Page 45</p> <p>1 Q Does the Indiana Election Division have to seek 2 approval from either the Secretary of State or the 3 Commission whenever it is taking certain actions? 4 A No in almost every case. The only instances I can 5 think of that are exceptions to that rule would be 6 with regard to the Election Division's budget, 7 which is submitted by the Secretary of State. So 8 we certainly have to provide information to assist 9 the Secretary in that process. Likewise with the 10 Election Commission, if the Commission votes to 11 task the Election Division with a particular duty, 12 then we would be obliged to perform it as best we 13 could. 14 Q What's the most recent example of Indiana Election 15 Commission delegating or asking for assistance with 16 a duty that you can recall? 17 A It's difficult to sort out the number because there 18 are in some ways many things that they ask our 19 assistance with. Of course, our legal relationship 20 to them is not that of attorney-client, but in the 21 ordinary course of business during a Commission 22 meeting it is routine for our Commission to ask our 23 counsels to provide their opinions regarding 24 matters of law that have been raised before the 25 Commission. That would be the most typical recent</p>	<p style="text-align: right;">Page 47</p> <p>1 the clerk would contact us to ask the office, 2 again, with requirements regarding any number of 3 aspects of the election process, from candidate 4 filing issues to legal notices to how to enforce 5 campaign finance at the local level, which is the 6 job of the county election board. Again, a whole 7 panoply of subjects that could come to us by way of 8 a county election board. 9 Q Could a county election board ask the 10 Indiana Election Division for advice related to 11 disability-related topics? 12 A Yes, certainly. 13 Q What assistance does the Election Division provide 14 to county boards of elections when a local election 15 is happening? 16 A We provide a variety of assistance on many aspects 17 of the election process. One that immediately 18 comes to mind is that we offer to proof ballots 19 that have been prepared by the county election 20 boards, realizing that we don't have specific 21 knowledge regarding individual candidates but with 22 regard to ensuring that the ballots are in proper 23 format and contain the language required under 24 Indiana law. That, I think, is the example that 25 immediately comes to mind.</p>
<p style="text-align: right;">Page 46</p> <p>1 example. 2 Q What authority does the Secretary of State have 3 over the Indiana Election Division? 4 A The Secretary of State has the role that I 5 described earlier regarding the budget process, but 6 beyond that, the Secretary does not directly 7 supervise the Indiana Election Division. Obviously 8 there is communication between the Secretary of 9 State's office and the Election Division, but the 10 terms of authority, again, we're not appointed and 11 serving at the pleasure of the Secretary of State. 12 We're serving through gubernatorial appointment and 13 have our own separate identity for many practical 14 purposes. 15 Q Under what circumstances would a county board of 16 elections contact the Indiana Election Division? 17 A There would be a variety of circumstances. Many 18 times the county election board contacts us through 19 the circuit court clerk, who in most counties 20 serves as the secretary of a three-member county 21 election board. We have been contacted while a 22 county election board meeting is in session and 23 placed on speakerphone. That's an extreme example, 24 but it has occurred. 25 More typically a county election board through</p>	<p style="text-align: right;">Page 48</p> <p>1 Q Are counties required to submit their ballots for 2 approval that they're passing all the state laws 3 that they need to pass? 4 A No, they are not. It is strictly a voluntary 5 service that we offer to help out everyone in the 6 process to avoid errors or mistakes that could 7 cause complications or controversy in the election 8 process. 9 Q As a matter of practice, how often do counties 10 contact the Election Division asking for assistance 11 in the formatting of ballots? 12 A Very frequently. It will vary according to the 13 experience perhaps that the individual county clerk 14 has with the election process. An individual who's 15 just begun serving as clerk is probably more 16 likely, but we hear from clerks who are either just 17 beginning or have realized the value of the more 18 eyes checking the ballot for compliance the better 19 and have taken advantage of our offer. 20 Q A ballot is a complex document, isn't it? 21 A It is very complex. 22 Q So there are some questions I'm going to ask you 23 just because they need to be on the record. How 24 many counties are there in Indiana? 25 A There are 92 counties in Indiana.</p>

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<p style="text-align: right;">Page 49</p> <p>1 Q How is a local county board of elections 2 structured?</p> <p>3 A In almost all counties the county election board 4 consists of three members. One is an elected 5 circuit court clerk, who serves a four-year term 6 and is subject to an eight-year term limit. The 7 other two individuals are appointed members 8 nominated for appointment by the clerk by the 9 county chairs of the two major political parties, 10 which in Indiana would be the democratic party and 11 the republican party.</p> <p>12 There are some variations in certain counties 13 in Indiana. In Lake County, which is our 14 second-largest county, there is a five-member 15 board, which has a similar structure but the role 16 of the clerk is instead performed by an appointed 17 county elections director. The same is true in 18 Porter County and there is a similar structure in 19 Tippecanoe County, the location of 20 Purdue University, where there is a three-member 21 board but that board absorbed some voter 22 registration duties that were formerly present in 23 another body before the General Assembly acted to 24 change it.</p> <p>25 Q Are county boards of elections typically supported</p>	<p style="text-align: right;">Page 51</p> <p>1 A That's correct.</p> <p>2 Q That's supported by one staff member; is that 3 right?</p> <p>4 A The clerk and when last I was aware and speaking to 5 the clerk he had managed to recruit one staff 6 member.</p> <p>7 Q Who perform all duties related to elections in 8 Parke County; is that right?</p> <p>9 A That would be correct. With the understanding, of 10 course, that on election day itself and in the 11 absentee process, volunteers, not employees, are 12 called in to perform practical functions of 13 absentee voting and in-person voting.</p> <p>14 Q So this one tiny staff has to deal with all 15 functions of running elections in their county and 16 the courts in their county; is that correct? 17 (Zoom connection interruption)</p> <p>18 Q Sorry. We froze for just a moment there. What's 19 the last thing you heard?</p> <p>20 A Just your reference to Parke County and its clerk 21 plus one election staffer.</p> <p>22 Q All right. So tell me if I understand this 23 correctly. The three members of the election board 24 and their one staffer are responsible for all work 25 to make an election happen in the county, including</p>
<p style="text-align: right;">Page 50</p> <p>1 by staffs?</p> <p>2 A Yes, to some degree. They are very seldom 3 supported by dedicated staff, if you will. As a 4 rule, they are supported by individuals employed by 5 the circuit court clerk. In the counties I 6 mentioned that are exceptional, they would have 7 staff that are designated as county election board 8 employees.</p> <p>9 Q So what's the county you can think of that has the 10 sort of smallest dedicated staff available to 11 helping get a local election going?</p> <p>12 A The answer that immediately comes to mind is 13 Parke County, which is located on the border with 14 Illinois. We recently in the last year or so had a 15 clerk resign and a replacement was selected to 16 serve as clerk. This individual has one person to 17 assist him with both the duties of the election as 18 well as other duties that are assigned to the 19 clerk's office under Indiana law, which include 20 administration of the court system. And so I would 21 point to Parke County as a poster child of a very 22 lean county election administration operation.</p> <p>23 Q So tell me if I understand this correctly. 24 Parke County has a three-member election board; is 25 that right?</p>	<p style="text-align: right;">Page 52</p> <p>1 the recruiting of volunteer poll workers, and all 2 duties related to the local courts; is that right?</p> <p>3 A That is generally correct, yes.</p> <p>4 Q What's the largest county-wide elections operation 5 that you can think of in Indiana?</p> <p>6 A I would have to think the Marion County, which is 7 the county where Indianapolis is located. It has a 8 somewhat different structure. It has the same 9 three-member county election board that I spoke of 10 earlier and, again, they have some dedicated 11 election staff. They have an election director and 12 I believe about five people that work under her 13 supervision. They also have a separate county 14 voter registration office with a bipartisan 15 co-director organization system where each of those 16 employees I would estimate somewhere between six 17 and ten individuals apiece.</p> <p>18 Q And do I understand correctly that for any given 19 election a county board of elections will have to 20 produce more than one ballot? Is that right?</p> <p>21 A That's very true.</p> <p>22 Q And that's because different people are up for 23 election in different precincts and different races 24 can be at stake and also sometimes there's a legal 25 requirement to produce the same ballot in more than</p>

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<p style="text-align: right;">Page 53</p> <p>1 one language? Do I understand that right?</p> <p>2 A Yes, that's correct, mainly with regard to the</p> <p>3 first point. Indiana is not covered by the</p> <p>4 requirement to provide election material in</p> <p>5 multiple languages --</p> <p>6 Q Okay.</p> <p>7 A -- according to the 2020 census determinations</p> <p>8 recently released, but yes with regard to the other</p> <p>9 portion of the question.</p> <p>10 Q Can you give me an estimate of how many ballots</p> <p>11 Marion County had to produce for the November 2020</p> <p>12 general election? I mean how many different</p> <p>13 ballots did they have to format and populate.</p> <p>14 A If I could maybe rephrase that in terms of my</p> <p>15 understanding. We would use the phrase ballot</p> <p>16 style --</p> <p>17 Q Okay.</p> <p>18 A -- to indicate the varieties of ballots that would</p> <p>19 be available. This will vary considerably from one</p> <p>20 type of election to another, but I've certainly</p> <p>21 heard a past Marion County circuit court clerk and</p> <p>22 the present clerk reference preparing hundreds of</p> <p>23 different ballot styles. That's because in primary</p> <p>24 elections political party offices, such as precinct</p> <p>25 committeemen, are elected. Next year in 2022 the</p>	<p style="text-align: right;">Page 55</p> <p>1 with different numbers to insert. Obviously the</p> <p>2 two different ballots for the primary that I</p> <p>3 mentioned and the potential for a referenda,</p> <p>4 although Indiana is not a referenda state or</p> <p>5 initiative state and so those are uncommon but they</p> <p>6 do occur from time to time. In addition, ballot</p> <p>7 styles have to reflect everything in Parke County,</p> <p>8 from different State Senate or State House</p> <p>9 districts, different county council districts, and</p> <p>10 in cases where municipal officials are being</p> <p>11 elected ballot styles for voters who are inside a</p> <p>12 municipality and a different style for those who</p> <p>13 are outside of a municipality.</p> <p>14 And so with that in mind, multiplied by the</p> <p>15 number of precincts, which is significantly less in</p> <p>16 Parke County -- I don't recall exactly but I would</p> <p>17 estimate somewhere around 15 -- again, a</p> <p>18 significant number but nothing approaching the</p> <p>19 upper limits we discussed with regard to</p> <p>20 Marion County.</p> <p>21 Q But being done by four people who also have to do</p> <p>22 every other thing for the elections and the county</p> <p>23 court system; is that right?</p> <p>24 A That would be true. I should say that I'm not sure</p> <p>25 whether in Parke County the clerk has been able to</p>
<p style="text-align: right;">Page 54</p> <p>1 democratic party will be electing precinct</p> <p>2 committeemen at the primary. The republican party</p> <p>3 did the same in May of 2020. And so there can</p> <p>4 literally be as many different ballot styles as</p> <p>5 there are precincts, which in Marion County</p> <p>6 approaches 500.</p> <p>7 Q Well, and maybe two per precinct if you're having a</p> <p>8 primary?</p> <p>9 A Oh, yes, of course, in a primary you would have to</p> <p>10 have a minimum of a democratic ballot and a</p> <p>11 republican ballot. And then in the instance where</p> <p>12 a referenda was placed on the ballot, any person</p> <p>13 could vote on that referenda without participating</p> <p>14 in a party primary and so that would add a third</p> <p>15 element to the ballot style formula.</p> <p>16 Q So for a primary election in Marion County, as many</p> <p>17 as 1,500 ballot styles might need to be produced</p> <p>18 for a single primary election?</p> <p>19 A That is a potential. I don't believe it ever</p> <p>20 actually hits the highest possible number, but it</p> <p>21 is a very large number indeed.</p> <p>22 Q What about for Parke County? How many ballot</p> <p>23 styles might they have to produce for a primary</p> <p>24 election?</p> <p>25 A Well, they would have the same formula applied but</p>	<p style="text-align: right;">Page 56</p> <p>1 hire a person to assist with the court side of the</p> <p>2 job but I am familiar with the election side of the</p> <p>3 job.</p> <p>4 Q So I think we've spoken about some of these</p> <p>5 questions before, but I want to make sure that I</p> <p>6 understand things correctly. In terms of guidance</p> <p>7 issued to counties on how to comply with state and</p> <p>8 federal law, not only disability law but election</p> <p>9 laws of all kinds, it sounds like the</p> <p>10 Indiana Election Division has at least an annual</p> <p>11 conference, it provides information through its</p> <p>12 website, it maintains the Indiana Election</p> <p>13 Administrator's Portal which has publications and</p> <p>14 links, it also issues a voter registration manual</p> <p>15 and an election administration manual, and it also</p> <p>16 just goes to lots of meetings, and also answers</p> <p>17 questions and calls from county boards of</p> <p>18 elections. Did I get all that right?</p> <p>19 A I think that's correct. I would just simply add</p> <p>20 that we identified two representative publications.</p> <p>21 In fact, we publish perhaps ten or more separate</p> <p>22 publications in paper form to make available at the</p> <p>23 county level, at the polling places, in addition to</p> <p>24 the two that you specifically mentioned.</p> <p>25 Q Can the Indiana Election Division investigate a</p>

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<p style="text-align: right;">Page 57</p> <p>1 county board of elections if they think there's a</p> <p>2 problem?</p> <p>3 A Not without direction from the Indiana Election</p> <p>4 Commission. The ability to investigate is</p> <p>5 something that the Election Commission could</p> <p>6 require us to perform. The exception to that</p> <p>7 statement would be a particular type of grievance</p> <p>8 procedure under the Help America Vote Act where if</p> <p>9 a complaint is filed in accordance with the Indiana</p> <p>10 statutory requirements set forth in 3-6-5, as I</p> <p>11 recall it, then the Election Division would</p> <p>12 investigate the basis for the allegation that's</p> <p>13 made and it could conceivably involve a county</p> <p>14 election board.</p> <p>15 Q So do I understand correctly that it's the</p> <p>16 Indiana Election division that receives and</p> <p>17 investigates the complaints under the Help America</p> <p>18 Vote Act?</p> <p>19 A That would be correct with regard to the particular</p> <p>20 requirements of the Help America Vote Act.</p> <p>21 Q Does the Indiana Election Commission have a role</p> <p>22 around complaints under the Help America Vote Act?</p> <p>23 A The Indiana statute provides for the Commission to</p> <p>24 become involved at a certain point in the complaint</p> <p>25 process but not necessarily in every case. The</p>	<p style="text-align: right;">Page 59</p> <p>1 A No. There's no provision for the Commission to</p> <p>2 discipline a county election board. Its</p> <p>3 organizational statute states generally that it</p> <p>4 supervises the work of county election boards and</p> <p>5 officials but does not provide any disciplinary</p> <p>6 mechanism other than what might be an advisory</p> <p>7 opinion to direct or conceivably admonish a county</p> <p>8 election board, but no disciplinary process in the</p> <p>9 generally-understood meaning of that word.</p> <p>10 Q So what are the responsibilities of the IED with</p> <p>11 respect to local elections in Indiana?</p> <p>12 A The Election Division's responsibilities are</p> <p>13 multifaceted. The core function, aside from</p> <p>14 providing information that I referenced earlier, is</p> <p>15 serving as the repository for election results and</p> <p>16 preparing the documents for certification of those</p> <p>17 election results by the Secretary of State. And if</p> <p>18 you wouldn't mind repeating the question, I think I</p> <p>19 may have had an additional response. If you</p> <p>20 wouldn't mind doing that, it would be helpful.</p> <p>21 Q The question was what is the Indiana Election</p> <p>22 Division responsible for with respect to elections</p> <p>23 conducted locally.</p> <p>24 A Again, aside from the informational part and then</p> <p>25 the canvassing part of the process, the</p>
<p style="text-align: right;">Page 58</p> <p>1 statute provides for an initial determination to be</p> <p>2 made by the Election Division whether or not the</p> <p>3 facts, if true, as asserted in the complaint would,</p> <p>4 in fact, result or indicate a violation of the</p> <p>5 Help America Vote Act standards. If the</p> <p>6 Election Division determines that, yes, those facts</p> <p>7 would constitute a violation if true, then the</p> <p>8 Election Division would conduct an investigation</p> <p>9 and at the end of that process would issue a report</p> <p>10 to the Indiana Election Commission, which would</p> <p>11 permit them to conduct a proceeding that would</p> <p>12 involve their making the determination regarding</p> <p>13 the facts involved in the particular case in</p> <p>14 controversy.</p> <p>15 Q What about complaints under the Help America Vote</p> <p>16 Act related to disability access? Would those</p> <p>17 complaints follow the process that you just</p> <p>18 outlined?</p> <p>19 A To the extent that they involve the Help America</p> <p>20 Vote Act's requirements that a voter be able to</p> <p>21 cast a ballot privately and independently.</p> <p>22 Q Can the Indiana Election Division discipline a</p> <p>23 county board of elections?</p> <p>24 A No.</p> <p>25 Q Can the Commission?</p>	<p style="text-align: right;">Page 60</p> <p>1 Election Division is responsible, as referenced</p> <p>2 earlier, for reviewing precinct boundary changes</p> <p>3 that a county proposes and receiving information</p> <p>4 from the county that's necessary to respond to the</p> <p>5 survey conducted following each general election by</p> <p>6 the U.S. Election Assistance Commission. We also</p> <p>7 receive from counties requests for permission to</p> <p>8 dispose of voting systems when they've reached the</p> <p>9 end of life or they've been replaced by a</p> <p>10 newly-purchased system. Those are the primary</p> <p>11 duties that I recall.</p> <p>12 Q You said that canvassing is one of those duties.</p> <p>13 Can you define that for me, please.</p> <p>14 A Certainly. Each county election board as part of</p> <p>15 its duties on election night and then in the period</p> <p>16 following that for ten days for provisional and</p> <p>17 late-arriving ballots actually counts the votes</p> <p>18 cast for each candidate and on each public</p> <p>19 question, and then for those candidates or public</p> <p>20 questions which involve state-level offices or</p> <p>21 state-level questions the county election board at</p> <p>22 the end of the canvassing process is required to</p> <p>23 certify the final official results from the county</p> <p>24 to the Election Division so that we can prepare</p> <p>25 documentation for the Secretary of State to certify</p>

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<p style="text-align: right;">Page 61</p> <p>1 which candidate has been nominated or elected and 2 whether a public question has been approved or 3 defeated. 4 Q Does the Secretary of State provide any oversight 5 of the Division to see if it's performing its 6 duties correctly? 7 A Not in a formal sense of the word. There is no 8 direct oversight required or directed by statute. 9 Again, as a practical matter, we do in our role of 10 assisting the Secretary work closely with her and 11 so the Secretary would be aware of the actions of 12 the Election Division that would impact her ability 13 to perform her duties such as certification, but 14 no, not in terms of supervision in the sense of an 15 employer/employee type of supervision. 16 Q Do I understand correctly that each county election 17 board is required to report to the 18 Election Division following each election? 19 A Yes, that is correct. 20 Q What's the purpose of those reports? 21 A The purpose of the reports are, in addition to the 22 canvassing process I mentioned and the collection 23 of data for the U.S. Election Assistance Commission 24 survey, to also serve as a mechanism to check to 25 see if any anomalies or problems have occurred</p>	<p style="text-align: right;">Page 63</p> <p>1 dive too deeply into the minutia of the system, but 2 I think I can maybe make some general overall 3 comments that would be applicable. That is, under 4 Indiana's system no single elected official or 5 administrative body has a final comprehensive 6 control over the election process. That work and 7 responsibilities are divided both at the state 8 level internally in the way that we've discussed 9 but then also between the state and the counties. 10 We rely entirely, as I mentioned earlier, on 11 the statutes enacted by the General Assembly, with 12 rare exceptions, and those statutes contemplate 13 that although county election boards do not have 14 home rule to institute practices without 15 authorization by the General Assembly that the 16 General Assembly has historically offered counties 17 legislative options. For example, which type of 18 voting system they might use in a particular county 19 and other aspects of the process that would reflect 20 the difference between a Parke County and a 21 Marion County. 22 Q Thank you. Anything else that is sort of important 23 to understand about the differences between these 24 agencies and also how they work together? 25 A I think it's important to understand that the</p>
<p style="text-align: right;">Page 62</p> <p>1 involving voting systems that were not reported by 2 the voting system vendor, as an example, and also 3 to prepare statistical information of the type that 4 we make available on our website with regard to 5 voter turnout percentages and that type of 6 statistical information. 7 Q Would those reports be an appropriate place to 8 report concerns about access involving disability? 9 A Yes, they would. 10 Q Would the Secretary of State be notified by the IED 11 about any problems reported in any of these 12 reports? 13 A There is not a requirement for the 14 Election Division to notify the Secretary of State. 15 As a practical matter, if the Secretary of State's 16 office is receiving inquiries from constituents or 17 media about a problem, we routinely share 18 information that we had gained access to regarding 19 that issue. 20 Q Do you think that there's anything else that is 21 important for someone trying to learn the system to 22 understand about the difference between the SOS, 23 the Division, the Commission, and the county boards 24 that we haven't talked about already? 25 A The structure is very complex and I hesitate to</p>	<p style="text-align: right;">Page 64</p> <p>1 Secretary of State, as I mentioned earlier, is a 2 separately-elected constitutional office, whereas 3 the other bodies are created by statute and filled 4 by appointment. The other aspect that's important 5 to understand is that both at the state and county 6 level Indiana requires a degree of bipartisanship 7 in the administration of the election process so 8 that within the Election Division, within each 9 county, there are representatives of both major 10 political parties who are involved actively in the 11 administration of elections and deciding how to 12 implement those statutes. 13 Q All right. So if we could, let's take a look at 14 the 30(b)(6) notice again. I'm going to share my 15 screen. 16 Let's take a look at Topic No. 5, Defendant's 17 budgets and budgets for disability-related access. 18 Sir, do you see that? 19 A I do see that. 20 Q Great. Are you the person at the Indiana Election 21 Division who's most knowledgeable about that topic? 22 A I would hesitate to claim that title. I am 23 certainly involved in the administration of the 24 budget and acknowledge that there are others, 25 including employees of my co-director, who are</p>

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<p style="text-align: right;">Page 65</p> <p>1 specifically tasked with the day-to-day 2 administration of accounts and expenditures under 3 the budget who might have more detailed knowledge 4 than I would have on that level.</p> <p>5 Q Who do you think sort of the most knowledgeable 6 people about budgets at the IED would be?</p> <p>7 A I would say myself, Valerie Warycha, my counterpart 8 Angela Nussmeyer, and her counsel Matthew Kochevar, 9 and then the individual staff member who performs 10 the largest part of the accounting work is employed 11 by Angela Nussmeyer and named 12 Kimmy Hollowell-Williams.</p> <p>13 Q But you're prepared to testify about this today?</p> <p>14 A To the extent of my ability and knowledge, yes.</p> <p>15 Q Great. So I'm going to stop sharing that again.</p> <p>16 MS. BRANDT-YOUNG: All right. If we could 17 have the record reflect that we'll be marking 18 another exhibit. For those who have copies of the 19 exhibits, this is a file entitled AP_2019_B_1_2_1 20 Agency Summary.</p> <p>21 Q Sir, do you see this document?</p> <p>22 A Yes, I do.</p> <p>23 Q Is it more or less legible, the top half of the 24 first page, for you?</p> <p>25 A Yes, the print is rather small but it is legible.</p>	<p style="text-align: right;">Page 67</p> <p>1 laptop so that he can toggle it back and forth.</p> <p>2 MS. BRANDT-YOUNG: Thank you for letting us 3 know. As long as the exhibit is the only document 4 open and visible on the laptop, that would be fine.</p> <p>5 MS. ABSHIRE: It will be in just a moment. 6 AP_2019_B?</p> <p>7 MS. BRANDT-YOUNG: It ends with 8 Agency Summary.</p> <p>9 A All right. Houston, I think we've solved our 10 problem.</p> <p>11 Q Good (laughing). So can you scroll with me to 12 page 2 in the middle where it says 00040-Secretary 13 of State?</p> <p>14 A Yes, I see that.</p> <p>15 Q So what it says here is that the General Fund for 16 the year 2020, the budget for the Secretary of 17 State is just over \$6 million from the General Fund 18 and that from the Dedicated Funds it's about 19 \$17 million. Do you see that there?</p> <p>20 A I do.</p> <p>21 Q Of all the things that the Secretary of State's 22 office does, how much of that General Fund portion 23 is for election-related activities? I know you're 24 going to have to estimate.</p> <p>25 A I would have to estimate without getting further</p>
<p style="text-align: right;">Page 66</p> <p>1 Q Let's bump this baby up.</p> <p>2 A That's much better.</p> <p>3 Q Good. I'm going to represent to you that this was 4 taken off the State of Indiana website in its 5 budget portions and that this is the 2019 to 2021 6 as-passed budget Agency Summary.</p> <p>7 MS. BRANDT-YOUNG: So just going to take a 8 moment to confirm that anybody who has a copy of 9 this exhibit has it open if they'd like to read it.</p> <p>10 Q Do you recognize this document, sir?</p> <p>11 A This is not a document that I would ordinarily 12 access, but I'm generally familiar with the format.</p> <p>13 Q I am going to scroll to page 2, which is where the 14 Secretary of State's allocation is located. If you 15 would like to take a moment to open a local copy of 16 this and scroll through it, you're welcome to do 17 so.</p> <p>18 A Okay. Thank you. I'll ask for assistance to do 19 that.</p> <p>20 Q Great. So I'm hoping that the computer that you 21 are on has access to this file that I e-mailed to 22 Courtney.</p> <p>23 MS. ABSHIRE: Give us a second, Christina.</p> <p>24 MS. BRANDT-YOUNG: Great.</p> <p>25 MS. ABSHIRE: We're opening it on a second</p>	<p style="text-align: right;">Page 68</p> <p>1 information because the Election Division has a 2 separate line item appropriation that's different 3 from the Secretary of State.</p> <p>4 Q All right. So let's scroll to that now. That 5 should be on page 4 right there at the top.</p> <p>6 A I've found it. Yes, I do see that.</p> <p>7 Q Great. So I'm looking at a line that says 8 00063-Indiana Election Division.</p> <p>9 A Yes.</p> <p>10 Q The total budget there is about \$6 million; is that 11 right?</p> <p>12 A That is for each of two years of a biennial. In 13 Indiana the budget covers a period that begins on 14 July 1 of the odd-numbered year and ends on June 30 15 of the year two years later, so it reflects the 16 amount for each of those two fiscal years within a 17 biennial budget.</p> <p>18 Q All right. So you were telling us before is this 19 \$6 million for each of these two years separate 20 from the Secretary of State above or included in 21 Secretary of State above?</p> <p>22 A It is separate. Recognizing, again, that the 23 Indiana Election Division is to some degree an 24 autonomous state agency that has a relationship but 25 not directly part of the Secretary of State's</p>

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<p style="text-align: right;">Page 69</p> <p>1 office in comparison to other divisions within that</p> <p>2 office.</p> <p>3 Q So fair to say that in the General Fund category,</p> <p>4 which is roughly \$6.3 million per year, all of that</p> <p>5 will be used for election-related activities?</p> <p>6 A Yes, that would be true. There is about -- I'm</p> <p>7 speaking now in terms of the biennium -- there's</p> <p>8 about \$1.2 million that's used for personnel and</p> <p>9 operating expenses; there's about \$6 million-plus</p> <p>10 that is used for the operation of the</p> <p>11 Statewide Voter Registration System; there is</p> <p>12 roughly \$2.5 million that's used for voter list</p> <p>13 maintenance, to call out those specific items</p> <p>14 within the budget; and I could provide additional</p> <p>15 detail if needed by consulting some of the</p> <p>16 documents we've provided in response to Plaintiffs'</p> <p>17 requests.</p> <p>18 Q In terms of the Dedicated Funds, which is listed at</p> <p>19 almost \$74,000 per year, all of that will be for</p> <p>20 election-related activities as well; is that right?</p> <p>21 A Yes, I believe that's correct.</p> <p>22 Q Of the General Fund how much of that will go to</p> <p>23 activities involving disability access?</p> <p>24 A There is not a specific itemization in the</p> <p>25 Election Division budget with regard to activities</p>	<p style="text-align: right;">Page 71</p> <p>1 part of either the Help America Vote Act and other</p> <p>2 recent federal legislation. I do not recall</p> <p>3 without further research receiving those federal</p> <p>4 funds or the \$6,000-some, \$12,000 per biennium.</p> <p>5 Q Here's another question. When I looked through</p> <p>6 this document, I was unable to find an allocation</p> <p>7 for the Indiana Election Commission. And if you</p> <p>8 would like to perform a little search in your</p> <p>9 document to confirm that's true, we're certainly</p> <p>10 willing to give you the time for that.</p> <p>11 A That is actually an easier question to answer.</p> <p>12 Q Okay.</p> <p>13 A The Indiana Election Commission receives no</p> <p>14 appropriation whatsoever. The compensation of</p> <p>15 members for attendance at meetings or mileage, the</p> <p>16 various resources they require, are all provided by</p> <p>17 the Indiana Election Division from that general</p> <p>18 administration budget item.</p> <p>19 Q So when you said previously that the Help America</p> <p>20 Vote Act is one source of federal funding that can</p> <p>21 be used for elections in Indiana, you said that the</p> <p>22 Secretary of State is the entity that applies for</p> <p>23 and receives that funding; is that right?</p> <p>24 A The Secretary of State is designated by Indiana law</p> <p>25 as the administrator of the fund in which federal</p>
<p style="text-align: right;">Page 70</p> <p>1 related to disability access. However, the</p> <p>2 portions of the budget beyond the specific ones</p> <p>3 I've mentioned for general administration would be</p> <p>4 the source used for activities related to</p> <p>5 activities like the providing information at</p> <p>6 conferences and training with regard to disability</p> <p>7 requirements.</p> <p>8 Q So disability access is mainstreamed throughout the</p> <p>9 budget rather than being itemized separately. Do I</p> <p>10 understand that right?</p> <p>11 A That's correct.</p> <p>12 Q And that's true of the whole budget, regardless of</p> <p>13 whether it comes from the General Fund, the</p> <p>14 Dedicated Funds, or the Federal Funds; is that</p> <p>15 right?</p> <p>16 A I believe that's correct. I'd want to look in a</p> <p>17 little more detail with regard to the</p> <p>18 Dedicated Funds, but generally that's correct.</p> <p>19 Q Okay. So looking at the Federal Funds line, which</p> <p>20 is a whopping \$6,475 per year, what federal funds</p> <p>21 are those?</p> <p>22 A Those are not federal funds that are immediately</p> <p>23 obvious to me either. The amount is very small by</p> <p>24 comparison. Generally speaking, federal funding is</p> <p>25 received through the Secretary of State's office as</p>	<p style="text-align: right;">Page 72</p> <p>1 monies under the Help America Vote Act were</p> <p>2 deposited, the Election Assistance Administration</p> <p>3 Fund, as I recall it, in Indiana Code 3-11-6.</p> <p>4 Q All right. So let's take a quick moment to switch</p> <p>5 back to Exhibit 1, which is the 30(b)(6) notice,</p> <p>6 and talk about Topic No. 6. Do you see that on the</p> <p>7 screen?</p> <p>8 A Yes, I do.</p> <p>9 Q Great. That's federal sources of funding for the</p> <p>10 Defendant. Are you the most knowledgeable person</p> <p>11 at the IED about this topic?</p> <p>12 A With regard to federal sources for funding for the</p> <p>13 Election Division?</p> <p>14 Q Yes.</p> <p>15 A Again, I would not claim the title of most</p> <p>16 knowledgeable because, again, there are others who</p> <p>17 are more involved in the details of actual</p> <p>18 accounting administration that I referenced</p> <p>19 earlier.</p> <p>20 Q So who would be the most knowledgeable person at</p> <p>21 the agency about federal funding?</p> <p>22 A If I had to indicate a single individual who would</p> <p>23 have more hands-on knowledge, it would probably be</p> <p>24 the actual staffer who is involved with all aspects</p> <p>25 of our budget, Kimmy Hollowell-Williams.</p>

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<p style="text-align: right;">Page 73</p> <p>1 Q But you're prepared to testify about this today?</p> <p>2 A To the best of my ability.</p> <p>3 Q Great. So let's go ahead and stop sharing the</p> <p>4 document for a minute.</p> <p>5 So do I understand correctly from what you</p> <p>6 said before that the Secretary of State is the</p> <p>7 administrator of Help America Vote Act funding in</p> <p>8 Indiana? Is that right?</p> <p>9 A Yes, that's generally correct.</p> <p>10 (Ms. Robaidek joined the deposition at this</p> <p>11 time.)</p> <p>12 Q And some of that funding is allocated to the</p> <p>13 Election Division; is that right?</p> <p>14 A Some of that funding is used for activities</p> <p>15 conducted under the Vote Indiana Plan, which was a</p> <p>16 requirement of the Help America Vote Act for each</p> <p>17 state to develop to submit as a pre-condition for</p> <p>18 receiving federal funds.</p> <p>19 It would be more accurate I think to say that</p> <p>20 the Secretary of State is referenced, of course, in</p> <p>21 that document, which was most recently amended in</p> <p>22 2009, as the administrator of the funds but under</p> <p>23 Indiana statute the Election Division has a role to</p> <p>24 play in certain aspects with regard to the</p> <p>25 Statewide Voter Registration System, as I</p>	<p style="text-align: right;">Page 75</p> <p>1 promptly, if my recollection is correct, in 2004</p> <p>2 when we began development of the Statewide Voter</p> <p>3 Registration System and the other purposes provided</p> <p>4 for under the plan.</p> <p>5 Q And it's still receiving Help America Vote Act</p> <p>6 funding today?</p> <p>7 A I would say it has the potential to, in that there</p> <p>8 are funds authorized by the Help America Vote Act</p> <p>9 that have never actually been appropriated by</p> <p>10 Congress, to my understanding, and the amount of</p> <p>11 federal funds is certainly smaller and perhaps less</p> <p>12 frequent than it was in the initial days following</p> <p>13 the enactment of the legislation.</p> <p>14 Q So did I understand you to say earlier that part of</p> <p>15 what HAVA involves is a complaint process and that</p> <p>16 complaint process starts at the Indiana Election</p> <p>17 Division and eventually can move over to the</p> <p>18 Election Commission? Do I understand that right?</p> <p>19 A Yes, that's correct.</p> <p>20 Q And some of those complaints could be disability</p> <p>21 access complaints; is that correct?</p> <p>22 A Yes, they could be.</p> <p>23 Q And it sounds like some of the funding under HAVA</p> <p>24 that Indiana receives is meant to defray the</p> <p>25 expenses of answering to those complaints; is that</p>
<p style="text-align: right;">Page 74</p> <p>1 mentioned, where the expenditure of some of those</p> <p>2 funds requires approval by both the</p> <p>3 Election Division and the Secretary of State.</p> <p>4 Q Do those Help America Vote Act funds ever touch the</p> <p>5 activities of the Indiana Election Commission?</p> <p>6 A Not in any direct way that I can note other than</p> <p>7 the grievance procedure I referenced earlier.</p> <p>8 There was a budget item in the Vote Indiana Plan,</p> <p>9 which I recall was \$100,000, for the grievance</p> <p>10 procedure, which as I indicated earlier could</p> <p>11 involve the Commission but not automatically.</p> <p>12 Q Okay. Sounds good.</p> <p>13 MS. BRANDT-YOUNG: I'd like to note for the</p> <p>14 record that the Zoom chat has been joined by</p> <p>15 Julia Robaidek. She is a paralegal that is</p> <p>16 employed with Disability Rights Advocates and is</p> <p>17 assisting on this case, so she should be noted as</p> <p>18 belonging to the plaintiffs. It was a plan for her</p> <p>19 to be here in case anyone was wondering. Okay?</p> <p>20 THE WITNESS: Very good.</p> <p>21 MS. BRANDT-YOUNG: Great. Sounds good.</p> <p>22 Q So when did Indiana first begin to receive HAVA</p> <p>23 funding?</p> <p>24 A Indiana received Help America Vote Act as soon as</p> <p>25 possible. Our plan was submitted and approved</p>	<p style="text-align: right;">Page 76</p> <p>1 right?</p> <p>2 A That's correct.</p> <p>3 Q Regarding that \$100,000, what's the date that you</p> <p>4 remember seeing that?</p> <p>5 A That would have been part of the budget adopted in</p> <p>6 2009, which was the most recent amendment to the</p> <p>7 plan. It may have been there previously in 2004,</p> <p>8 but I distinctly recall it from the 2009 most</p> <p>9 recent amendment.</p> <p>10 Q So what period of time was that \$100,000 meant to</p> <p>11 cover?</p> <p>12 A It is a non-reverting fund, so it is available in</p> <p>13 perpetuity.</p> <p>14 Q To your knowledge, are any of those funds still</p> <p>15 available?</p> <p>16 A To my knowledge, the entirety of those funds are</p> <p>17 still available.</p> <p>18 Q What would be required to start using those funds?</p> <p>19 A What would be required would be a complaint under</p> <p>20 the statutory mechanism set forth in Indiana law to</p> <p>21 implement. That would require more than the</p> <p>22 ordinary course of business for the</p> <p>23 Election Division staff to conduct.</p> <p>24 I can give an example if it's helpful. It's</p> <p>25 not related directly to our topic here. We had one</p>

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<p style="text-align: right;">Page 77</p> <p>1 complaint that did reach the Commission with regard</p> <p>2 to a voter who alleged that their ballot had not</p> <p>3 been cast independently in the sense that it was</p> <p>4 not for the candidate that they intended to choose,</p> <p>5 an allegation that a voting system was functioning</p> <p>6 or set incorrectly. This required the</p> <p>7 Election Division staff upon making the</p> <p>8 determination that it would be a violation of the</p> <p>9 Help America Vote Act if it were true to travel</p> <p>10 about an hour to the Madison County Highway Garage</p> <p>11 where we with the complainant and the County</p> <p>12 inspected the equipment that was subject of the</p> <p>13 complaint and then filed a report with the</p> <p>14 Commission. And so I don't believe that any funds</p> <p>15 were actually expended out of that \$100,000, but</p> <p>16 that would be the type of activity that might</p> <p>17 require use of those funds.</p> <p>18 Q So you mentioned before that HAVA funds obviously</p> <p>19 are subject to appropriation by Congress. Is it</p> <p>20 then incumbent upon the state to ask for funding</p> <p>21 from HAVA or is the process for getting HAVA</p> <p>22 funding merely that Congress decides?</p> <p>23 A No. There is a more complicated process, in that</p> <p>24 receipt of the funds is incumbent upon the state</p> <p>25 matching appropriation of a particular percentage</p>	<p style="text-align: right;">Page 79</p> <p>1 funds used by Indiana replaced lever machines which</p> <p>2 were used in a large number, I believe even a</p> <p>3 majority, of counties and some punch card voting</p> <p>4 systems used in several other counties.</p> <p>5 As part of the Help America Vote Act state</p> <p>6 plan, I'm very pleased to say that Indiana, so far</p> <p>7 as I know, was the first state in the nation,</p> <p>8 perhaps the only one, that made condition of</p> <p>9 federal funds being provided to a county</p> <p>10 conditional on the county certifying that its</p> <p>11 polling places on election day were physically</p> <p>12 accessible. Also, the equipment that was certified</p> <p>13 to meet the requirements of the Help America Vote</p> <p>14 Act included assistive technology of various types</p> <p>15 for voters with different types of disabilities,</p> <p>16 including what I might refer to as a layperson in</p> <p>17 this area as an audio ballot where a voter would</p> <p>18 indicate choices through a headphone and microphone</p> <p>19 as one example.</p> <p>20 I'll say what I was going to think of was</p> <p>21 really not covered by HAVA funds, it was more</p> <p>22 election administration funds at the state level,</p> <p>23 so I would focus on the voting equipment as the</p> <p>24 primary answer to that question.</p> <p>25 MS. ABSHIRE: Counsel, sorry to interrupt.</p>
<p style="text-align: right;">Page 78</p> <p>1 that's determined based on the amount of federal</p> <p>2 funding provided to each state, and the</p> <p>3 General Assembly during the course of the period</p> <p>4 since the enactment of HAVA has appropriated</p> <p>5 matching funds for that purpose.</p> <p>6 Q Obviously the HAVA process started in 2004, as you</p> <p>7 say. Generally over time has the State of Indiana</p> <p>8 applied for less than the total amount that</p> <p>9 Congress had appropriated for Indiana under HAVA?</p> <p>10 A No, I don't believe that over the course of time</p> <p>11 Indiana has applied for less than the amount</p> <p>12 appropriated by Congress. I would have to</p> <p>13 condition that answer by saying I am aware that</p> <p>14 there is approximately \$25,000 that would</p> <p>15 potentially be available to Indiana if the state</p> <p>16 chose to go through the process of complying with</p> <p>17 the federal requirements to submit an application</p> <p>18 for that separate \$25,000.</p> <p>19 Q Are you aware of any HAVA funding that's been used</p> <p>20 by Indiana specifically for the purpose of</p> <p>21 assisting voters with disabilities or increasing</p> <p>22 disability access?</p> <p>23 A Yes. I think so, in the sense that a major</p> <p>24 component of the Help America Vote Act involved</p> <p>25 upgrading of voting systems, and that's where the</p>	<p style="text-align: right;">Page 80</p> <p>1 Are we coming up on a stopping point for a lunch</p> <p>2 break any time soon?</p> <p>3 (Attorney reviewing notes)</p> <p>4 MS. BRANDT-YOUNG: Checking my outline. Give</p> <p>5 me a second.</p> <p>6 MS. ABSHIRE: Sure.</p> <p>7 MS. BRANDT-YOUNG: I think the answer is not</p> <p>8 imminently and, therefore, if anyone would like to</p> <p>9 take a five-minute break to go get a glass of</p> <p>10 water, we can certainly do that now. Would you</p> <p>11 like to do that or would you like to try to push on</p> <p>12 through 1:00?</p> <p>13 THE WITNESS: I am fine with continuing</p> <p>14 through 1:00.</p> <p>15 MS. ABSHIRE: All right. If Brad's fine, then</p> <p>16 I'm fine.</p> <p>17 MS. BRANDT-YOUNG: Okay. Let's see what we</p> <p>18 can accomplish here. Give me a second. I just</p> <p>19 want to orient in light of the time limit.</p> <p>20 (Attorney reviewing notes)</p> <p>21 Q All right. Sir, are you familiar with the</p> <p>22 Coronavirus Aid, Relief, and Economic Security Act?</p> <p>23 A In very general terms. I'm certainly aware of its</p> <p>24 passage and its impact on federal funding being</p> <p>25 made available but not with regard to any</p>

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<p style="text-align: right;">Page 81</p> <p>1 particular details.</p> <p>2 Q The acronym for the Coronavirus Aid, Relief, and</p> <p>3 Economic Security Act is the CARES Act. So to your</p> <p>4 knowledge, has Indiana received any funding under</p> <p>5 the CARES Act?</p> <p>6 A Yes, I believe so.</p> <p>7 Q Who is the administrator of that funding? Who's</p> <p>8 the official that the funding went to?</p> <p>9 A I am familiar only with the Secretary of State's</p> <p>10 office being the recipient of some of that funding.</p> <p>11 There may be other State agencies that I'm not</p> <p>12 aware of.</p> <p>13 Q To your knowledge, as with the HAVA funding, which</p> <p>14 potentially flows in part to the IED and the IEC,</p> <p>15 are you aware of CARES Act funding also being used</p> <p>16 by the IED and/or the IEC?</p> <p>17 A There would be no CARES Act funding used by the</p> <p>18 IEC.</p> <p>19 Q Okay.</p> <p>20 A With regard to the Election Division, the funding</p> <p>21 would have been used by the Secretary of State.</p> <p>22 Again, there might be consultation regarding</p> <p>23 particular projects that the Secretary of State's</p> <p>24 office would be publicizing, such as providing</p> <p>25 protective equipment for poll workers in the 2020</p>	<p style="text-align: right;">Page 83</p> <p>1 MS. BRANDT-YOUNG: That's not right. We are</p> <p>2 screen sharing but what are we sharing. Trying it</p> <p>3 again.</p> <p>4 Q All right. Are you seeing that e-mail again or are</p> <p>5 you seeing the United States Election Assistance</p> <p>6 Commission?</p> <p>7 A We're seeing the latter.</p> <p>8 Q Excellent. So, sir, do you recognize this</p> <p>9 document? Again, the file should be available to</p> <p>10 you if you would like to open it up and scroll</p> <p>11 through it.</p> <p>12 A I recognize the document. I'm attempting to scroll</p> <p>13 through it but not doing very well.</p> <p>14 MS. ABSHIRE: Christina, if you have no</p> <p>15 objection, if I could put it up on a second laptop</p> <p>16 so that he can scroll through it while also being</p> <p>17 able to view the Zoom screen, would that be okay</p> <p>18 with you as long as that's the only exhibit on my</p> <p>19 screen?</p> <p>20 MS. BRANDT-YOUNG: Perfect. Thank you.</p> <p>21 A Yes. Thank you. I am now able to scroll and go</p> <p>22 past the cover page of the document.</p> <p>23 Q Wonderful. So do you recognize this document?</p> <p>24 A I recognize it, although I don't recall reviewing</p> <p>25 it in detail at any point so it's not intimately</p>
<p style="text-align: right;">Page 82</p> <p>1 election, I recall as one, but not something that</p> <p>2 the Election Division would be directly involved in</p> <p>3 administering.</p> <p>4 Q All right.</p> <p>5 A If I can take the opportunity to supplement one</p> <p>6 answer that I gave previously.</p> <p>7 Q Please.</p> <p>8 A Given enough time, one can remember many things</p> <p>9 from the distant past. I recall the third</p> <p>10 deposition I was referencing, and that was in 1995</p> <p>11 in a case involving redistricting of county</p> <p>12 election districts in Vigo County, in Terre Haute,</p> <p>13 where I was called to testify as part of that</p> <p>14 litigation.</p> <p>15 Q Great. Thank you.</p> <p>16 A Yes.</p> <p>17 Q Likewise, that's given me an opportunity to find</p> <p>18 the exhibit.</p> <p>19 MS. BRANDT-YOUNG: So we'll be marking as</p> <p>20 Exhibit 3 a file entitled ACBI 454-470 and sharing</p> <p>21 our screen.</p> <p>22 Q Sir, can you see that?</p> <p>23 A I cannot.</p> <p>24 Q So sorry, sir. One second.</p> <p>25 MS. ABSHIRE: Christina, we see your e-mail.</p>	<p style="text-align: right;">Page 84</p> <p>1 familiar.</p> <p>2 Q So this is entitled U.S. Election Assistance</p> <p>3 commission 2020 Grant Expenditure Report. It</p> <p>4 purports to be dated July 2021. It was provided as</p> <p>5 part of Defendants' document production in this</p> <p>6 case. So let's go together to page 4 .pdf-wise.</p> <p>7 Here you'll find a table and the title of the table</p> <p>8 is Table 1: Section 101 HAVA Funds as of</p> <p>9 September 30, 2020.</p> <p>10 A Yes, I see that.</p> <p>11 Q Great. Sir, if you know, what are Section 101 HAVA</p> <p>12 funds?</p> <p>13 A Section 101 funds were part of three categories of</p> <p>14 funds under the Help America Vote Act. The</p> <p>15 Section 102 funds were what were called requirement</p> <p>16 payments that had limitations with regard to what</p> <p>17 they could be expended upon by the state, whereas</p> <p>18 Section 101 funds were more generally available for</p> <p>19 the states to make improvements with regard to the</p> <p>20 federal election process is my best summary</p> <p>21 description.</p> <p>22 Q So looking at these columns here, if you know, it</p> <p>23 states that the amount received by Indiana under</p> <p>24 Section 101 is basically \$6.2 million and that the</p> <p>25 interest earned is just over \$1 million. Do you</p>

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<p style="text-align: right;">Page 85</p> <p>1 see that here?</p> <p>2 A I do.</p> <p>3 Q So there's a total expenditures of \$7.2 million</p> <p>4 under HAVA. Was any of that money spent on</p> <p>5 increasing access for voters with disabilities, if</p> <p>6 you know?</p> <p>7 A I believe the answer is yes. Again, in part</p> <p>8 through not only the expenditure on more accessible</p> <p>9 voting systems but if my memory is correct that may</p> <p>10 have been the source of funding for a survey that</p> <p>11 we conducted on behalf of the Governor's Council</p> <p>12 for People with Disabilities where individuals with</p> <p>13 disabilities were recruited to survey Indiana's</p> <p>14 polling places to identify ones which had issues</p> <p>15 that would impede access by voters with</p> <p>16 disabilities. I'd have to confirm it, but my</p> <p>17 recollection is that some of this funding might</p> <p>18 also have been expended in the sort of education</p> <p>19 and outreach to all voters that would include</p> <p>20 references to options available for voters with</p> <p>21 disabilities.</p> <p>22 Q So are you able to explain for us the difference</p> <p>23 between the amount received and the interest</p> <p>24 earned?</p> <p>25 A The amount received, of course, is what came</p>	<p style="text-align: right;">Page 87</p> <p>1 Q Great. So if you'll look with me, page 12 contains</p> <p>2 a table that starts at page 11 entitled</p> <p>3 Table 4: Section 101 CARES Act Funds as of</p> <p>4 December 31, 2020.</p> <p>5 A Yes, I see that.</p> <p>6 Q Great. So if we scroll down onto page 12 of the</p> <p>7 .pdf, we have a line for Indiana here.</p> <p>8 A Yes, I see that.</p> <p>9 Q It's set up in the same way as the previous table.</p> <p>10 To your knowledge, is it correct that Indiana has</p> <p>11 received over \$8 million from the</p> <p>12 Federal Government under the CARES Act?</p> <p>13 A That's true to the best of my knowledge and belief.</p> <p>14 I qualify that because, again, since the</p> <p>15 Secretary of State is the entity that's receiving</p> <p>16 the portion of these funds that I'm familiar with,</p> <p>17 I don't have direct knowledge of the actual amount</p> <p>18 that would remain with regard to funds available to</p> <p>19 the Secretary of State, but I have no reason to</p> <p>20 doubt that the chart is inaccurate.</p> <p>21 Q So to the best of your understanding, Indiana has</p> <p>22 received about \$8 million in CARES Act funding?</p> <p>23 A Yes, that's correct.</p> <p>24 Q Given that this allocation is appearing in a</p> <p>25 U.S. Election Assistance Commission report, what is</p>
<p style="text-align: right;">Page 86</p> <p>1 directly from the U.S. Treasury to the treasurer of</p> <p>2 State of Indiana, the auditor's office, who are</p> <p>3 involved in the actual management of the funds.</p> <p>4 Part of the requirements under the federal grant</p> <p>5 was that the funds be deposited in accounts that</p> <p>6 would earn interest that would be credited to the</p> <p>7 account, and that was complied with in Indiana. We</p> <p>8 had a routine Election Assistance Commission audit</p> <p>9 several years ago to focus on, among other things,</p> <p>10 ensuring that that requirement for the crediting of</p> <p>11 interest had been complied with.</p> <p>12 Q So looking at the final column here, is it correct</p> <p>13 that the balance left over after the expenditures</p> <p>14 that Indiana has made is \$5,689?</p> <p>15 A That's correct to the best of my knowledge and</p> <p>16 belief.</p> <p>17 Q So does that mean that the State has not yet used</p> <p>18 all of the HAVA funding that's available to it?</p> <p>19 A That would be a correct inference to say, yes, that</p> <p>20 those funds remain available in perpetuity and,</p> <p>21 therefore, could be used.</p> <p>22 Q Thank you. Then let's go to page 12 of the .pdf.</p> <p>23 A Sorry. I'm trying to get there.</p> <p>24 Q Take your time.</p> <p>25 A I'm there. All right.</p>	<p style="text-align: right;">Page 88</p> <p>1 that funding used for?</p> <p>2 A The funding has been used for a variety of</p> <p>3 purposes, again, by the Secretary of State's</p> <p>4 office, and so my knowledge in this case is a</p> <p>5 little less direct. But as I recall, the CARES Act</p> <p>6 funding was used to, again, provide assistance and</p> <p>7 material with regard to the conduct of the election</p> <p>8 in Indiana, such as everything from hand sanitizers</p> <p>9 to other types of equipment designed to safeguard</p> <p>10 the health of the voters in the election process</p> <p>11 and the poll workers in the election process.</p> <p>12 Q So fair to say it was about making elections safe</p> <p>13 during the pandemic, that was the purpose of this</p> <p>14 funding as allocated to the Secretary of State for</p> <p>15 elections purposes?</p> <p>16 A I think that's a fair characterization.</p> <p>17 Q Was any of that money used for disability access?</p> <p>18 A I am not aware of any specific use of that money</p> <p>19 for disability access. I would have to do further</p> <p>20 research into the submitted material to confirm if</p> <p>21 that's correct.</p> <p>22 Q Who would know?</p> <p>23 A The Secretary of State's office, of course, is</p> <p>24 directly involved in administering the program and</p> <p>25 so Secretary of State staffers would be available</p>

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<p style="text-align: right;">Page 89</p> <p>1 that I can identify individually if that's the</p> <p>2 point of your question.</p> <p>3 Q Yes. Can you think of any names of people who</p> <p>4 would know?</p> <p>5 A The single individual that would be most</p> <p>6 knowledgeable would be Jerry Bonnet, who serves as</p> <p>7 counsel for the Secretary of State.</p> <p>8 Q Okay. So if we could, let's switch back to</p> <p>9 Exhibit 1 for a moment, which is the 30(b)(6)</p> <p>10 notice, and look at Topic 2 for a moment. That is,</p> <p>11 Design, organization, and operation of local,</p> <p>12 state, and federal elections in Indiana, including</p> <p>13 but not limited to elections that involve voting in</p> <p>14 a location other than a formally designated polling</p> <p>15 place or elections office, voting under the</p> <p>16 Uniform Overseas and Civilian Absentee Voting Act.</p> <p>17 A Yes, I see that.</p> <p>18 Q Great. Also, auxiliary aids and services offered</p> <p>19 to voters with disabilities.</p> <p>20 A Yes.</p> <p>21 Q Great. Are you the most knowledgeable person at</p> <p>22 the Indiana Election Division about this topic?</p> <p>23 A Again, I believe I'm very knowledgeable. I always</p> <p>24 hesitate to claim greater knowledge than others,</p> <p>25 but I believe I can speak competently regarding it.</p>	<p style="text-align: right;">Page 91</p> <p>1 receive absentee ballots, assuming that they meet</p> <p>2 those particular qualifications.</p> <p>3 Q So when you say qualifications -- I'm sorry -- did</p> <p>4 you say there are 13 qualifications?</p> <p>5 A With regard to receiving an absentee ballot by</p> <p>6 mail.</p> <p>7 Q Is the process for voting absentee by mail the same</p> <p>8 whether it's a local, a federal, or a state</p> <p>9 election?</p> <p>10 A Yes, in almost every particular.</p> <p>11 Q And is it fair to say that if you would like to</p> <p>12 vote absentee by mail in Indiana, you have to be</p> <p>13 registered to vote and you have to apply for an</p> <p>14 absentee ballot? Is that correct?</p> <p>15 A Yes, that is correct.</p> <p>16 Q All right. So for the purpose of trying to be</p> <p>17 succinct today, I'm going to describe my</p> <p>18 understanding of generally how the absentee voting</p> <p>19 by mail process works and you tell me if I've got</p> <p>20 the broad outlines of it.</p> <p>21 A Certainly.</p> <p>22 Q A voter who wishes to vote absentee by mail in</p> <p>23 Indiana needs to be registered to vote, which could</p> <p>24 involve filling out a form; is that right?</p> <p>25 A That's correct.</p>
<p style="text-align: right;">Page 90</p> <p>1 Q Great. Do you think that there's anybody at the</p> <p>2 agency who's more knowledgeable about this than</p> <p>3 you?</p> <p>4 A Not in particular that I would identify beyond, as</p> <p>5 I've said, my general counsel and my counterpart</p> <p>6 and counsel counterpart are also familiar.</p> <p>7 Q So let's stop sharing that for now.</p> <p>8 All right. So we've already talked a little</p> <p>9 about what absentee voting means under Indiana law,</p> <p>10 that it encompasses absentee voting by mail and</p> <p>11 also some voting in elections offices before</p> <p>12 election day. Do I still have that right?</p> <p>13 A Yes, that's correct.</p> <p>14 Q Great. Is every voter in Indiana entitled to vote</p> <p>15 absentee without further excuse?</p> <p>16 A No, not in every case. It depends upon the method</p> <p>17 of transmittal of the absentee ballot. A voter is</p> <p>18 not required to provide a reason for voting in an</p> <p>19 absentee ballot in person at a county election</p> <p>20 office. However, a voter is required to provide</p> <p>21 one of I think 14 different qualifications to</p> <p>22 receive an absentee ballot by mail. The voters</p> <p>23 subject to UOCAVA, the military and overseas</p> <p>24 civilian voters, and now with recent legislation</p> <p>25 voters with print disabilities are entitled to</p>	<p style="text-align: right;">Page 92</p> <p>1 Q They also have to make an application for an</p> <p>2 absentee vote by mail ballot; is that right?</p> <p>3 A That's correct.</p> <p>4 Q Eventually a ballot will be sent to them by one of</p> <p>5 several methods that we're going to talk about in</p> <p>6 some detail?</p> <p>7 A Assuming that the application is approved, that's</p> <p>8 correct.</p> <p>9 Q Excellent. And then the voter has to transmit the</p> <p>10 ballot back to their local county board of</p> <p>11 elections so that it can be canvassed; is that</p> <p>12 right?</p> <p>13 A That's correct.</p> <p>14 Q So what are the methods by which a voter can apply</p> <p>15 for an absentee vote by mail ballot?</p> <p>16 A A voter can apply for an absentee vote by mail</p> <p>17 ballot in a variety of methods. Of course, the</p> <p>18 traditional method is by paper. There are often</p> <p>19 political parties or public interest groups who</p> <p>20 will mail out absentee applications that permit the</p> <p>21 voter to complete the application and submit it to</p> <p>22 the county and receive an absentee ballot by mail.</p> <p>23 The absentee ballot by mail is also available on</p> <p>24 the Indiana Election Division, Secretary of State</p> <p>25 website for individuals who have a signature on</p>

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<p style="text-align: right;">Page 93</p> <p>1 file either at the Bureau of Motor Vehicles or as 2 part of their state identification card that can be 3 affixed to the application. And, of course, the 4 UOCAVA voters, as I mentioned, can apply for an 5 absentee ballot by mail if they wish by using fax 6 or an e-mail attachment that contains the form 7 itself as prescribed by the Election Division and 8 completed with the required elements. 9 Q So tell me if I've got this right. Anyone seeking 10 to apply to vote absentee by mail can use a paper 11 form that they mail in, they can do an entirely 12 online process with no mailing at all at 13 indianavoters, for UOCAVA voters and anyone 14 encompassed within the UOCAVA system there's an 15 application that they can mail, fax, or e-mail; is 16 that right? 17 A Yes, that's correct. I would just add that with 18 regard to the military and overseas voters, the 19 Federal Voting Assistance Program of the 20 Department of Defense prescribes a combined 21 registration/absentee application form that that 22 voter might use. Voter generally would use that 23 form rather than the Indiana absentee application 24 form that others would use. 25 Q Do I understand correctly that for UOCAVA voters --</p>	<p style="text-align: right;">Page 95</p> <p>1 Senate Enrolled Act 398 of 2021. First of all, so 2 does that time frame make sense? 3 A Yes, I understand the context you're describing. 4 Q Thank you. And then for a non-UOCAVA voter in that 5 time frame they would apply for an absentee ballot 6 either by mailing in a paper form or by completing 7 an entirely online process at indianavoters.com; is 8 that right? 9 A Correct. 10 Q In terms of the paper form, some voters can't read 11 that form by themselves because of their 12 disabilities; right? 13 A Correct. 14 Q If that form were available in an alternative 15 format, like large print or braille, some of those 16 voters would be able to fill out that form by 17 themselves; right? 18 A I would believe that's correct, yes. 19 Q Does any entity in Indiana have a duty to provide 20 that absentee ballot application in an alternative 21 format if a voter asks for it? 22 A I am not aware of any statute that requires those 23 materials to be provided in that particular format. 24 However, county election boards are authorized to 25 provide material related to the absentee process in</p>
<p style="text-align: right;">Page 94</p> <p>1 MS. BRANDT-YOUNG: And for Michele, that's 2 U-O-C-A-V-A, Uniformed and Overseas Citizens 3 Absentee Voting Act. 4 Q -- UOCAVA voters are different from non-UOCAVA 5 voters in Indiana in two important ways, one of 6 which is that they can register to vote and apply 7 for an absentee ballot in the same form and the 8 other of which is that they can submit that form by 9 mail, e-mail, and fax, which other voters can't do? 10 Is that accurate, sir? 11 MS. ABSHIRE: Objection. Compound and asked 12 and answered. 13 A I hate to ask you to repeat the question. I'll try 14 to answer that as best I can. Yes, I think 15 generally that is correct, but I guess I'd reserve 16 the right to add some additional detail if I've 17 missed a nuance of that. 18 Q I think that'll do for now. 19 A All right. 20 Q So in the next series of questions let's focus on 21 voters who are not in the UOCAVA system and to make 22 things I hope simpler let's focus on the time 23 period and the law as it stood in December 2020. 24 The purpose of that is to talk about the system 25 that existed prior to the passage of</p>	<p style="text-align: right;">Page 96</p> <p>1 braille. I am not familiar with any specific 2 reference to large print. 3 Q When you say that they are authorized to provide it 4 in braille, where is that authorization documented? 5 A That's part of Indiana Code. Believe it's in 6 3-11-4 generally, section 2 or 3 is my 7 recollection. It is a main provision for the 8 county election board in terms of its printing of 9 ballots. 10 Q As of December 2020, did the IED provide any 11 generally-available guidance to county election 12 boards on how to do that? 13 A No, not to my knowledge. 14 Q Is there a process prescribed for how people should 15 make those requests and how the county should 16 respond? 17 A No, there is not a process prescribed by Indiana 18 statute. 19 THE WITNESS: Sorry. We're getting some 20 problems here on the screen. 21 MS. ABSHIRE: Sorry, Christina. I'm getting 22 an Outlook thing pop up. Now we're good. 23 THE WITNESS: Thank you. 24 A I think as a practical matter, an individual voter 25 who wished to access material in braille format</p>

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<p style="text-align: right;">Page 97</p> <p>1 would contact the county election board and ask</p> <p>2 what the board's capabilities were in terms of</p> <p>3 being able to provide that to the voter and then</p> <p>4 the county election board, since the statute</p> <p>5 specifically references the board, I assume this</p> <p>6 would be a meeting of the county election board to</p> <p>7 proceed with that request, but I would assume that</p> <p>8 it would be processed in that manner.</p> <p>9 Q Are you aware of anyone ever doing that?</p> <p>10 A I am not aware of any individual who has requested</p> <p>11 an absentee ballot or other ballot by braille.</p> <p>12 This is simply my impression -- I don't claim</p> <p>13 expertise -- but my general understanding is that</p> <p>14 the use of braille and braille literacy has been in</p> <p>15 decline in recent years because of voters' greater</p> <p>16 comfort with some adaptive technology, such as the</p> <p>17 microphone and headset type of voting system. And</p> <p>18 so, no, I can't recall a specific instance where a</p> <p>19 voter has requested it and braille material has</p> <p>20 been produced.</p> <p>21 Q Who at the Indiana Election Division would you ask</p> <p>22 about this?</p> <p>23 A I do not know of any specific person I would ask</p> <p>24 about it. I think I would probably ask my</p> <p>25 executive assistant if he had received any</p>	<p style="text-align: right;">Page 99</p> <p>1 their employer or a union representative, no one</p> <p>2 outside can see what's happening inside the voting</p> <p>3 booth? Is that correct?</p> <p>4 A That is correct. That is the requirement of the</p> <p>5 statute, yes.</p> <p>6 Q Is it reasonable to expect that no one outside the</p> <p>7 voting booth can hear what's happening inside the</p> <p>8 voting booth?</p> <p>9 A I would say that is a general expectation.</p> <p>10 Although some people's conversations are louder</p> <p>11 than others, but yes, generally that would be the</p> <p>12 expectation.</p> <p>13 Q I interrupted you. You said that no one being able</p> <p>14 to see what was happening in the voting booth was</p> <p>15 sort of the point, the design; is that right?</p> <p>16 A That's correct. It's a violation of Indiana law to</p> <p>17 knowingly intrude inside the voting booth either</p> <p>18 physically or visually to see how a voter is</p> <p>19 marking their choices on the ballot.</p> <p>20 Q What's the purpose of that?</p> <p>21 A The purpose in general is to protect the secrecy of</p> <p>22 the ballot and more generally the safety of the</p> <p>23 voter from intimidation, to prevent bribery of</p> <p>24 voters being facilitated.</p> <p>25 Q And so in the case of a voter with a disability</p>
<p style="text-align: right;">Page 98</p> <p>1 inquiries from the general public on our phone line</p> <p>2 or 800 number. That individual is Joe McLain. I</p> <p>3 would ask Valerie Warycha as my counsel if she had</p> <p>4 heard from any county that had received such a</p> <p>5 request.</p> <p>6 Q Okay. So thinking about how to cast a ballot in</p> <p>7 Indiana in person. For people with disabilities</p> <p>8 who are voting in person on election day at their</p> <p>9 polling place, they're entitled to have the</p> <p>10 assistance of someone with them in the voting booth</p> <p>11 if they choose; is that right?</p> <p>12 A That's generally correct. There are just a couple</p> <p>13 of restrictions on that that are derived from</p> <p>14 federal law. An individual is not permitted to</p> <p>15 request their employer or their union</p> <p>16 representative to provide assistance, but beyond</p> <p>17 that, any individual that the voter brings with</p> <p>18 them to the polls can assist. If the voter does</p> <p>19 not bring an individual with them, a bipartisan</p> <p>20 team of poll workers who are designated election</p> <p>21 judges can assist the individual after completing</p> <p>22 the appropriate documentation.</p> <p>23 Q Is it fair to say that while a voter with a</p> <p>24 disability is voting inside a voting booth with the</p> <p>25 assistance of the person of their choice who's not</p>	<p style="text-align: right;">Page 100</p> <p>1 being assisted in the booth by the person of their</p> <p>2 choice, it's also to promote their privacy and</p> <p>3 independence?</p> <p>4 A That would be correct. It is, as I might say, a</p> <p>5 balancing act so that the voter is enabled to</p> <p>6 perform the most important function of voting with</p> <p>7 the assistance of the individuals chosen by the</p> <p>8 voter.</p> <p>9 Q It's not a fundamental change to Indiana's voting</p> <p>10 program to have a voter with a disability get the</p> <p>11 assistance of the person of their choice inside the</p> <p>12 voting booth; right?</p> <p>13 MS. ABSHIRE: Objection to the extent it calls</p> <p>14 for a legal conclusion.</p> <p>15 A I would say it is certainly not a change. This</p> <p>16 practice has been in place since the enactment of</p> <p>17 the federal legislation on this topic, and so it is</p> <p>18 a process that is generally familiar to certainly</p> <p>19 election workers and I believe to many voters who</p> <p>20 may have experienced the need for assistance in</p> <p>21 past elections.</p> <p>22 Q It's not a change to the basic nature of voting to</p> <p>23 let someone receive assistance in this way; is that</p> <p>24 right?</p> <p>25 A Again, that's correct because it has been permitted</p>

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<p style="text-align: right;">Page 101</p> <p>1 for decades.</p> <p>2 Q Okay. So applying that same framework to an</p> <p>3 absentee vote by mail voter. If that person and</p> <p>4 especially in this December 2020 time frame that</p> <p>5 we're speaking of, an absentee vote by mail voter,</p> <p>6 are they allowed to get the assistance of the</p> <p>7 person of their choice to fill out that paper</p> <p>8 ballot?</p> <p>9 A They are allowed to, again, receive assistance.</p> <p>10 Again, I believe the same restrictions apply under</p> <p>11 the federal law with regard to the special</p> <p>12 individuals I noted earlier. Generally speaking,</p> <p>13 for example, a person who holds a power of attorney</p> <p>14 can assist the voter in the process, although</p> <p>15 Indiana statute precludes the power of attorney</p> <p>16 from marking the ballot. Certainly individuals</p> <p>17 could provide assistance to the voter in that</p> <p>18 context.</p> <p>19 Q Individuals who hold power of attorney could assist</p> <p>20 the voters?</p> <p>21 A I use that as a particular example, but other</p> <p>22 individuals, members of the household, for example,</p> <p>23 would be able to assist the voter.</p> <p>24 Q Would they be able to assist the voter in marking</p> <p>25 the ballot?</p>	<p style="text-align: right;">Page 103</p> <p>1 ways but not with the actual marking of the ballot.</p> <p>2 Q What is the purpose for that rule?</p> <p>3 MS. ABSHIRE: Objection to the extent it calls</p> <p>4 for a legal conclusion.</p> <p>5 A I hesitate to attempt to read the minds of the</p> <p>6 Indiana General Assembly either now or in the past.</p> <p>7 I can speculate to the extent that that's</p> <p>8 appropriate, and it's to say that in Indiana</p> <p>9 absentee balloting by mail has been the source of</p> <p>10 serious election law violations in the past that</p> <p>11 have resulted in the conviction and imprisonment of</p> <p>12 a former state representative within the last</p> <p>13 ten years and so in Indiana there is general</p> <p>14 concern among policymakers that the absentee ballot</p> <p>15 by mail process lends itself more to that type of</p> <p>16 violation of election integrity than in-person</p> <p>17 voting would.</p> <p>18 Q Did that conviction involve the falsification of</p> <p>19 absentee ballots of voters with disabilities?</p> <p>20 A It may very well have. It involved multiple</p> <p>21 violations by a particular individual who was</p> <p>22 forging absentee ballot applications, receiving</p> <p>23 absentee ballots, and submitting them in the name</p> <p>24 of the voter. Some of those voters might very well</p> <p>25 have been voters with disabilities, but I don't</p>
<p style="text-align: right;">Page 102</p> <p>1 A The statutes contemplate that the voter will be</p> <p>2 marking their own ballot. Since we're referring to</p> <p>3 the December 2020 regime, that particular</p> <p>4 requirement provided that if a voter was unable to</p> <p>5 mark their ballot, they were required to request</p> <p>6 the assistance of a bipartisan travel board. So</p> <p>7 the assistance would be limited to that point, not</p> <p>8 the actual marking of the ballot.</p> <p>9 Q So if a voter with a disability who wants to vote</p> <p>10 by mail on a paper ballot in December 2020 wants</p> <p>11 the assistance of a family member to fill out that</p> <p>12 ballot, they're not permitted to use it under</p> <p>13 Indiana law at that time; is that right?</p> <p>14 A That's correct. It would be the requirement to</p> <p>15 request a travel board that would apply in that</p> <p>16 case.</p> <p>17 Q If an Indiana voter with a disability wants to</p> <p>18 request the assistance of a family member to help</p> <p>19 them vote in the voting booth on election day,</p> <p>20 they're permitted to do that; is that correct?</p> <p>21 A That is correct.</p> <p>22 Q But not if they want the assistance of the same</p> <p>23 person to fill out a paper absentee ballot at home;</p> <p>24 is that right?</p> <p>25 A That would be correct. They can assist in other</p>	<p style="text-align: right;">Page 104</p> <p>1 have knowledge of that.</p> <p>2 Q Presumably some of those were on behalf of voters</p> <p>3 without disabilities?</p> <p>4 A I would presume that's the case, yes.</p> <p>5 Q If a voter with a disability in the December 2020</p> <p>6 time frame asked for permission to use the</p> <p>7 assistance of the person of their choice to mark a</p> <p>8 paper absentee ballot, would that be permitted as a</p> <p>9 reasonable accommodation under federal law?</p> <p>10 A Can I ask you to clarify whether you mean in the</p> <p>11 context of in-person voting or by mail or some</p> <p>12 other distinction?</p> <p>13 Q That's a good point. No reasonable accommodation</p> <p>14 would be needed to vote in person because a voter</p> <p>15 with a disability is allowed to take anyone they</p> <p>16 want who's not an employer or a union</p> <p>17 representative into the voting booth with them;</p> <p>18 right?</p> <p>19 A That's correct.</p> <p>20 Q The only person with a disability who would have to</p> <p>21 ask for permission to get a reasonable</p> <p>22 accommodation under the law of having the person of</p> <p>23 their choice assist them filling out a ballot would</p> <p>24 be a paper absentee by mail voter; right?</p> <p>25 MS. ABSHIRE: Objection to the extent it calls</p>

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<p style="text-align: right;">Page 105</p> <p>1 for a legal conclusion.</p> <p>2 A Yes, I have the same hesitancy based on the</p> <p>3 objection raised. It's difficult for me in my</p> <p>4 capacity to determine what is a reasonable</p> <p>5 accommodation.</p> <p>6 MS. ABSHIRE: Counsel, we're at three hours</p> <p>7 now. Can we go off for a lunch break pretty soon?</p> <p>8 MS. BRANDT-YOUNG: Give me just a second to</p> <p>9 check and see whether there are any questions we</p> <p>10 can do to close out this topic and then we should</p> <p>11 have lunch. Give me a second, please.</p> <p>12 MS. ABSHIRE: Sure.</p> <p>13 (Attorney reviewing notes)</p> <p>14 Q Let me just reconfirm something that I think you</p> <p>15 already said and then I believe we'll be ready for</p> <p>16 lunch. As of December 2020, under Indiana law if a</p> <p>17 voter with a disability wanted the assistance of a</p> <p>18 family member to fill out a paper absentee ballot</p> <p>19 from home to mail in, Indiana law would say that</p> <p>20 they can't do that; is that right?</p> <p>21 A Not entirely. Again, assistance can take many</p> <p>22 forms.</p> <p>23 Q Sorry. Assistance to mark their ballot choices.</p> <p>24 A To mark their ballot choices, then yes, I would</p> <p>25 agree.</p>	<p style="text-align: right;">Page 107</p> <p>1 absentee ballot. Do you remember that?</p> <p>2 A Yes, I do.</p> <p>3 Q In fact, that's still the rule today; correct?</p> <p>4 That people with print disabilities who want to</p> <p>5 mark a paper absentee ballot at home with the</p> <p>6 assistance of the person of their choice are not</p> <p>7 permitted to do so under Indiana law; is that</p> <p>8 right?</p> <p>9 A That would be a general statement true, yes.</p> <p>10 Q You're testifying on behalf of the Indiana Election</p> <p>11 Division, so let's start there. Has the IED ever</p> <p>12 done an analysis of whether permitting paper</p> <p>13 absentee ballot voters with disabilities to use the</p> <p>14 assistance of the person of their choice would be a</p> <p>15 fundamental alteration of Indiana's voting program?</p> <p>16 A No, the Indiana Election Division has done no</p> <p>17 analysis.</p> <p>18 MS. ABSHIRE: Also, objection to the extent it</p> <p>19 calls for a legal conclusion.</p> <p>20 MS. BRANDT-YOUNG: I'm sorry. I didn't</p> <p>21 understand the objection.</p> <p>22 MS. ABSHIRE: Objection to the extent it calls</p> <p>23 for a legal conclusion.</p> <p>24 MS. BRANDT-YOUNG: Thank you.</p> <p>25 Q So that is the question. Have they ever made that</p>
<p style="text-align: right;">Page 106</p> <p>1 MS. BRANDT-YOUNG: Okay. Why don't we break</p> <p>2 there for lunch. Can we come back in a half-hour?</p> <p>3 THE WITNESS: Yes, as far as I'm concerned.</p> <p>4 MS. BRANDT-YOUNG: Any objection?</p> <p>5 MS. ABSHIRE: (thumbs up)</p> <p>6 MS. BRANDT-YOUNG: Great. Thank you very</p> <p>7 much, sir. We'll see you at 1:30.</p> <p>8 THE WITNESS: Very well.</p> <p>9 (The deposition recessed from 1:00 to 1:30 for</p> <p>10 lunch.)</p> <p>11 (Ms. Robaidek left the deposition at this</p> <p>12 time.)</p> <p>13 Q All right. Welcome back, Mr. King.</p> <p>14 A Thank you.</p> <p>15 Q I assume that everything that we discussed before</p> <p>16 is still in place, there aren't any documents</p> <p>17 around you except what we've discussed to be up on</p> <p>18 your laptop as a deposition exhibit?</p> <p>19 A That is correct.</p> <p>20 Q Great. So before the break we were talking about</p> <p>21 people with print disabilities who might want to</p> <p>22 vote absentee on a paper ballot by mail and how in</p> <p>23 2020 you said they were not permitted to have the</p> <p>24 assistance of a family member or someone of their</p> <p>25 choice to help them mark their choices on a paper</p>	<p style="text-align: right;">Page 108</p> <p>1 analysis, reached that legal conclusion, and</p> <p>2 documented it in a writing somewhere? What I'm</p> <p>3 hearing from you, sir, is that they have not. Is</p> <p>4 that right?</p> <p>5 A That would be correct. No, I'm not aware of any</p> <p>6 such determination by the Election Division.</p> <p>7 Q Are you aware of any conversations, oral or</p> <p>8 written, around that topic?</p> <p>9 A None that I can recall.</p> <p>10 Q So it sounds like as far as you know that it's</p> <p>11 never come up; is that right?</p> <p>12 A No, I think it's safe to say it has not come up.</p> <p>13 Q And same question. Are you aware of any</p> <p>14 determination by the Indiana Election Division that</p> <p>15 allowing voters with print disabilities who want to</p> <p>16 vote absentee by mail, allowing them to do so with</p> <p>17 the assistance of the person of their choice would</p> <p>18 constitute an undue administrative burden on the</p> <p>19 State?</p> <p>20 A No, I'm not aware that the Election Division has</p> <p>21 made any such determination.</p> <p>22 Q Are you aware of any conversations around that</p> <p>23 subject?</p> <p>24 A No, I am not.</p> <p>25 Q So as you sit here today, the issue hasn't come up</p>

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<p style="text-align: right;">Page 109</p> <p>1 that you know of?</p> <p>2 A No, not that I can recall.</p> <p>3 Q So same question as to an undue financial burden.</p> <p>4 Are you aware of any determination by the IED that</p> <p>5 allowing print-disabled voters wanting to vote on a</p> <p>6 paper absentee ballot from home to use the</p> <p>7 assistance of someone of their choice would</p> <p>8 constitute an undue financial burden?</p> <p>9 A Again, I'm aware of no such determination with</p> <p>10 regard to the financial aspect of that.</p> <p>11 Q Are you aware of any conversations about that?</p> <p>12 A No.</p> <p>13 Q So as far as you know, hasn't come up?</p> <p>14 A Correct.</p> <p>15 Q Thank you. Let's turn to the traveling board,</p> <p>16 which you mentioned before. Can you explain what</p> <p>17 the traveling board does under Indiana law?</p> <p>18 A The traveling board is an entity that's established</p> <p>19 pursuant to state law, customized at the county</p> <p>20 level. Each county election board determines how</p> <p>21 many bipartisan teams of absentee voter traveling</p> <p>22 boards are required in their county. The</p> <p>23 individuals who serve on those traveling boards are</p> <p>24 nominated by the respective major political party</p> <p>25 chairs of the county, and if they're otherwise</p>	<p style="text-align: right;">Page 111</p> <p>1 any time during the normal hours that the clerk's</p> <p>2 office is open.</p> <p>3 The travel board then proceeds to visit the</p> <p>4 voter at the time and place requested and brings</p> <p>5 either a paper ballot or can bring a voting system</p> <p>6 that could have adaptive technology. That is a</p> <p>7 county option depending on the type of equipment</p> <p>8 that they have available. They then proceed to</p> <p>9 provide the voter with the ballot in whatever form</p> <p>10 that takes and then receive the voted ballot and</p> <p>11 return it to the county election board for</p> <p>12 processing and canvassing on election day.</p> <p>13 Q What is the purpose of the traveling board?</p> <p>14 A The purpose of the traveling board, in my</p> <p>15 understanding, would be to provide the greatest</p> <p>16 amount of convenience to voters who find themselves</p> <p>17 in circumstances that prevent them from either</p> <p>18 voting in person at a polling place or voting by</p> <p>19 mail in the case where they would qualify for that</p> <p>20 procedure in the location they desire. Because of</p> <p>21 the limitations of the voter's circumstances, the</p> <p>22 county is extending that convenience of the travel</p> <p>23 board to ensure that the voter has the right to</p> <p>24 cast a ballot.</p> <p>25 Q So is it fair to say that some of the people the</p>
<p style="text-align: right;">Page 110</p> <p>1 qualified under statute they are appointed to serve</p> <p>2 as traveling board members.</p> <p>3 The Indiana statute permits traveling boards</p> <p>4 to be active beginning twelve days before election</p> <p>5 day and continuing under normal circumstances until</p> <p>6 midnight of the day before the election. There are</p> <p>7 emergency provisions if a person happens to be</p> <p>8 hospitalized due to accident or illness on election</p> <p>9 day to have a travel board be made available, but</p> <p>10 the general rule is as I described.</p> <p>11 If a voter is required to use a travel board</p> <p>12 because they are a confined voter is one term used</p> <p>13 in the statute or in the case of a voter with</p> <p>14 disabilities is unable to mark the ballot -- again,</p> <p>15 I'm referring to the December 2020 regime, if you</p> <p>16 will -- then that individual must submit an</p> <p>17 application for the traveling board which is</p> <p>18 reviewed and if all is in order is approved. The</p> <p>19 voter and the traveling board then make</p> <p>20 arrangements for a mutually-acceptable meeting time</p> <p>21 for the travel board to visit the voter. If the</p> <p>22 voter is in an institution where they're being</p> <p>23 treated, such as a hospital or an assisted living</p> <p>24 facility or whatever, state law requires that the</p> <p>25 travel board be given access to that facility at</p>	<p style="text-align: right;">Page 112</p> <p>1 traveling board are trying to serve are voters who</p> <p>2 may have, for instance, had an accident or injury</p> <p>3 and are in the hospital and can't vote in person</p> <p>4 and didn't know that they needed to ask for a paper</p> <p>5 mail-in ballot ahead of time?</p> <p>6 A Yes, that's correct.</p> <p>7 Q And another category of people that the traveling</p> <p>8 board is supposed to serve are people who are</p> <p>9 homebound for whatever reason; is that right?</p> <p>10 A Yes, that would be correct.</p> <p>11 Q And then another category of people that the</p> <p>12 traveling board is supposed to serve are people</p> <p>13 with print disabilities who can't mark their</p> <p>14 choices for voting on the ballot by themselves?</p> <p>15 A That would be correct.</p> <p>16 Q People who are homebound, for instance, taking care</p> <p>17 of someone that they take care of, they qualify for</p> <p>18 the traveling board; is that right?</p> <p>19 A Yes. If they are a person who's caring for a</p> <p>20 confined individual in a private residence, then</p> <p>21 they are specifically authorized to request a</p> <p>22 travel board by statute.</p> <p>23 Q Those people can also vote by a paper absentee</p> <p>24 ballot by mail; right?</p> <p>25 A They could if they meet one of the 13 or so reasons</p>

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<p style="text-align: right;">Page 113</p> <p>1 to qualify for an absentee ballot by mail.</p> <p>2 Q So caring for someone else is definitely a</p> <p>3 justification for travel board. Do you know if</p> <p>4 it's also the same justification for having a paper</p> <p>5 mail-in ballot?</p> <p>6 A No, I don't believe that is specifically set forth</p> <p>7 in the list of reasons. There are a multitude of</p> <p>8 reasons that an individual might otherwise qualify</p> <p>9 to vote absentee by mail, such as simply being over</p> <p>10 sixty-five years of age, and so that might very</p> <p>11 well encompass someone who would fall into the</p> <p>12 other category that you mentioned.</p> <p>13 Q And you also mentioned that there are -- tell me if</p> <p>14 I've got this right -- two major sort of methods of</p> <p>15 voting that the traveling board supports, one is</p> <p>16 that some traveling boards will bring you a voting</p> <p>17 machine and some of them bring a paper ballot. Do</p> <p>18 I have that right?</p> <p>19 A Yes, that's correct.</p> <p>20 Q When the traveling board brings the voter a voting</p> <p>21 machine, are they permitted to watch the voter cast</p> <p>22 their ballot on the machine?</p> <p>23 A The purpose of the traveling board is to assist the</p> <p>24 voter to the extent that the voter requests it and</p> <p>25 that might involve watching the voter to provide</p>	<p style="text-align: right;">Page 115</p> <p>1 print disabilities who can't mark their choices on</p> <p>2 the ballot independently when the ballot is a paper</p> <p>3 ballot. Those folks have to make an appointment in</p> <p>4 advance; right?</p> <p>5 A That's correct.</p> <p>6 Q And that appointment has to happen during business</p> <p>7 hours; right?</p> <p>8 A Yes, it is at least the minimum that is required.</p> <p>9 The traveling board has to be available, but I know</p> <p>10 from anecdotal experience that because of demand</p> <p>11 and out of concern for the voter that many</p> <p>12 traveling boards will make themselves available</p> <p>13 well into the evening.</p> <p>14 Q A voter has to find a mutually-agreeable time with</p> <p>15 the traveling board; right?</p> <p>16 A Correct.</p> <p>17 Q They can't do it on their own schedule?</p> <p>18 A No. Because, of course, there are other voters who</p> <p>19 may qualify and the traveling board can only be in</p> <p>20 one place at one moment, so they have to</p> <p>21 coordinate.</p> <p>22 Q Whether a voter with a print disability is voting</p> <p>23 on a machine or on a paper ballot with the</p> <p>24 assistance of the traveling board, there's no</p> <p>25 requirement for the traveling board to leave the</p>
<p style="text-align: right;">Page 114</p> <p>1 instruction, but that's not the primary purpose of</p> <p>2 the traveling board.</p> <p>3 Q So if the traveling board brings you a voting</p> <p>4 machine to vote on, they're not required to leave</p> <p>5 the room so that you can vote privately; is that</p> <p>6 right?</p> <p>7 A They would not be required to leave the room, no.</p> <p>8 Q Is it fair to say that some of the machines that</p> <p>9 are brought by the traveling boards are accessible</p> <p>10 machines that enable people with disabilities to</p> <p>11 operate the machine by themselves independently?</p> <p>12 A Yes, I believe that to be true. Counties do have</p> <p>13 in some cases access to that equipment and they</p> <p>14 have the option under Indiana law to equip the</p> <p>15 traveling board with that equipment which would</p> <p>16 have adaptive features to serve voters with</p> <p>17 disabilities.</p> <p>18 Q Out of Indiana's 92 counties, do you know how many</p> <p>19 traveling boards provided that option in 2020?</p> <p>20 A No, I do not know. That's not information that is</p> <p>21 required to be reported, and so I would have no</p> <p>22 immediate answer for that number.</p> <p>23 Q All right. So for purposes of the next couple of</p> <p>24 questions about voters voting with the assistance</p> <p>25 of the traveling board, let's focus on voters with</p>	<p style="text-align: right;">Page 116</p> <p>1 room during this process; right?</p> <p>2 A That is correct. There's no statutory requirement</p> <p>3 for the traveling board to leave the room.</p> <p>4 Q As designed, in fact, the whole point is for them</p> <p>5 to be there to mark the ballot for the voter who</p> <p>6 can't do that independently on the equipment given;</p> <p>7 right?</p> <p>8 A That's correct. If the voter is undeniably unable</p> <p>9 to mark the ballot themselves, then the primary</p> <p>10 purpose is for the traveling board to be able to do</p> <p>11 that to reflect the intent of the voter.</p> <p>12 Q I mean, that's not private; right?</p> <p>13 A No, that would not be private in the ordinary sense</p> <p>14 of that word.</p> <p>15 Q Or independent?</p> <p>16 A Or independent.</p> <p>17 Q In contrast with a voter who is able to privately</p> <p>18 mark a paper ballot -- I should say mark their</p> <p>19 choices on a paper ballot -- those voters can do so</p> <p>20 at any time of day that they want without reference</p> <p>21 to anybody's schedule, without anybody's assistance</p> <p>22 or interference, and by themselves; right?</p> <p>23 A Yes, that is correct.</p> <p>24 Q Understanding, as we have already discussed, that</p> <p>25 the different counties in Indiana vary widely as to</p>

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<p style="text-align: right;">Page 117</p> <p>1 the resources available to them to fulfill their</p> <p>2 statutory duties, when we say traveling board, how</p> <p>3 many traveling boards are there in a county?</p> <p>4 A That will vary depending from not only county to</p> <p>5 county but election to election. Obviously there</p> <p>6 are need for fewer boards when the only races are</p> <p>7 municipal elections. Or to take a more extreme</p> <p>8 example, a special election conducted by a school</p> <p>9 corporation. The demand for travel board is</p> <p>10 significantly less when most election</p> <p>11 administrators would be advising the county party</p> <p>12 chairs of the need for individuals to serve. So it</p> <p>13 will vary tremendously through the election cycle.</p> <p>14 Q Are you aware of a voter ever not being able to</p> <p>15 cast their vote because they were unable to make an</p> <p>16 appointment with a traveling board?</p> <p>17 A The only instance that I do not have personal</p> <p>18 knowledge of is one that was referenced in the</p> <p>19 pleadings filed in this case with regard to</p> <p>20 Vanderburgh County where an individual indicated</p> <p>21 that she had requested travel board and the travel</p> <p>22 board did not appear for the November 2020</p> <p>23 election, but I do not recall any other case where</p> <p>24 an individual had requested a travel board and was</p> <p>25 advised that a travel board would be coming but, in</p>	<p style="text-align: right;">Page 119</p> <p>1 any specific examples I could cite. Again, it was</p> <p>2 a statewide issue for many counties.</p> <p>3 Q So there is a statement in the</p> <p>4 Election Administrator's Manual -- I did not turn</p> <p>5 it into an exhibit because the</p> <p>6 Election Administrator's Manual is large.</p> <p>7 A Yes.</p> <p>8 Q If you would like to, we can try to screen share it</p> <p>9 here. -- that says that traveling board</p> <p>10 appointments are limited and are scheduled at a</p> <p>11 mutually-agreeable time for the voter and county</p> <p>12 election board. Are you familiar with that</p> <p>13 statement?</p> <p>14 A Yes. I would have read that in reviewing the</p> <p>15 manual.</p> <p>16 Q What does traveling board appointments are limited</p> <p>17 mean?</p> <p>18 A I believe it reflects the fact that, again, there</p> <p>19 are only a limited number of individuals who are</p> <p>20 designated by the county election board and that</p> <p>21 the ability of the county election board to appoint</p> <p>22 additional traveling boards based on an unexpected</p> <p>23 surge in demand will make it impossible to fully</p> <p>24 anticipate every need that might occur.</p> <p>25 Q So does that mean that some voters might not be</p>
<p style="text-align: right;">Page 118</p> <p>1 fact, did not.</p> <p>2 Q If such a thing happened, would that be included in</p> <p>3 any report that a county board of elections would</p> <p>4 have to submit to the Indiana Election Division?</p> <p>5 A It would certainly be something that if the county</p> <p>6 was aware of the matter would be submitted as a</p> <p>7 problem or issue that occurred during the election,</p> <p>8 and so I would expect it to be reported based on</p> <p>9 the knowledge that the county had.</p> <p>10 Q The IED is dependent on the county to report that;</p> <p>11 is that correct?</p> <p>12 A That's correct, unless the voter would happen to</p> <p>13 directly contact the Election Division.</p> <p>14 Q What you mentioned was if a traveling board</p> <p>15 promised to come but didn't, then that would be</p> <p>16 reported. Have you ever heard of a time when a</p> <p>17 traveling board was simply overwhelmed and was</p> <p>18 unable to make appointments with all the people who</p> <p>19 requested to vote by traveling board?</p> <p>20 A I know that during 2020, particularly for the</p> <p>21 June 2020 primary that had been postponed from its</p> <p>22 normal date in May, that many counties reported</p> <p>23 that they were having great difficulty in</p> <p>24 recruiting traveling board members as well as poll</p> <p>25 workers for election day voting, but I don't have</p>	<p style="text-align: right;">Page 120</p> <p>1 able to get an appointment with the traveling</p> <p>2 board?</p> <p>3 A It is theoretically possible.</p> <p>4 Q And do I understand correctly that you testified</p> <p>5 that it was hard to recruit enough traveling boards</p> <p>6 during the pandemic?</p> <p>7 A That was my understanding from conversations with</p> <p>8 several county election officials, yes.</p> <p>9 Q If you know, did any counties report that, in fact,</p> <p>10 they were unable to make appointments with everyone</p> <p>11 that asked for them because of difficulties in</p> <p>12 recruiting enough traveling board members?</p> <p>13 A I do not recall any instance where that actually</p> <p>14 occurred, no.</p> <p>15 Q Nonetheless, it's stated in the</p> <p>16 Election Administrator's Manual that traveling</p> <p>17 board appointments are limited.</p> <p>18 A Yes.</p> <p>19 Q If a voter is unable to mark their choices on the</p> <p>20 ballot independently and they're homebound, what</p> <p>21 other choice do they have for voting in light of</p> <p>22 those limited appointments?</p> <p>23 A The only other alternatives are, in fact, the ones</p> <p>24 you've mentioned, which if they're not practical</p> <p>25 will be problematic for the voter to be able to</p>

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<p style="text-align: right;">Page 121</p> <p>1 cast their ballot. As I said, there's a large 2 number of individuals who would qualify to vote by 3 mail if they fall into one of the 13 or so 4 categories that would permit that process. And 5 beyond that, I'm not aware of another method that 6 would apply to voters generally, certainly under 7 the 2020 statutory scheme, that would enable the 8 voter to cast their ballot in that case.</p> <p>9 Q So if a voter is print disabled and homebound and 10 the traveling board is unable to make an 11 appointment, under Indiana law that might result in 12 their not being able to vote; is that right?</p> <p>13 A That is correct. That is possible.</p> <p>14 Q All right. So I was hoping we could talk about the 15 Uniformed and Overseas Citizens Absentee Voting Act 16 as it existed in December 2020, and the purpose of 17 that is to distinguish it from, as we said, the 18 SEA 398 changes. I just wanted to understand how 19 the program worked for the voters that it has 20 traditionally served in Indiana.</p> <p>21 A Okay, yes.</p> <p>22 Q We've discussed this a little bit already. When I 23 say a UOCAVA voter, that means a citizen who's in 24 the military or lives overseas and is, therefore, 25 absent from voting; right?</p>	<p style="text-align: right;">Page 123</p> <p>1 A I just indicated that the other distinction was 2 that the participants in the attorney general's 3 confidentiality program would not be entitled to 4 cast an absentee ballot by use of e-mail or fax in 5 the way that the UOCAVA voters would.</p> <p>6 THE WITNESS: I think we may be having screen 7 freeze problem.</p> <p>8 THE REPORTER: I think it's her that's frozen. 9 We'll just go off the record. 10 (A discussion was held off the record.)</p> <p>11 Q I think we were disconnected for less than a 12 minute?</p> <p>13 A Think so, yes.</p> <p>14 Q The last thing that I heard is that address 15 confidentiality voters are not permitted to submit 16 their ballots by e-mail and fax. Is that correct?</p> <p>17 A That's correct.</p> <p>18 Q Anything else that you'd like to add to that answer 19 so we can move on?</p> <p>20 A No. Just simply to clarify that the program is 21 limited to applicants who choose to use the 22 attorney general's service for that purpose and 23 does not apply generally to individuals who may 24 have a protective order, restraining order issued 25 against another individual. It's a more narrow</p>
<p style="text-align: right;">Page 122</p> <p>1 A Generally. It's a little broader than that. It's 2 to say it includes dependents of a military voter 3 and it applies to military voters whether they are 4 overseas or within the United States, and the 5 remainder of what you stated I think is accurate.</p> <p>6 Q And do I also understand correctly that address 7 confidentiality voters in Indiana are also 8 permitted to participate in the UOCAVA program?</p> <p>9 A No. The attorney general's confidentiality program 10 is restricted to those individuals who submit an 11 application to the attorney general's office 12 requesting that their voter registration 13 information, their address in particular, not be 14 readily available and that instead of voting 15 through a method that would require them to 16 identify their particular precinct, they would 17 submit a ballot to the attorney general's office 18 address and use the attorney general's office as 19 essentially a conduit between the voter and the 20 county election board. But that would not be 21 through the same method, if you will, as the UOCAVA 22 voters have with regard to e-mail and faxing of 23 ballots.</p> <p>24 Q You froze up there for me for just a minute. Can 25 you just repeat the last sentence that you said?</p>	<p style="text-align: right;">Page 124</p> <p>1 group of voters.</p> <p>2 Q All right. So I believe that we discussed 3 before -- and tell me if this is correct -- one way 4 in which UOCAVA voters are different from voters in 5 Indiana generally is that they're allowed to submit 6 a combined voter registration and absentee ballot 7 application form, whereas non-UOCAVA voters have to 8 submit separate forms for the registration and the 9 absentee ballot application. Is that right?</p> <p>10 A Yes, that's correct. That's a requirement under 11 federal law, at least with regard to federal 12 elections, the form being prescribed by the 13 U.S. Department of Defense Federal Voting 14 Assistance Program. Indiana has incorporated that 15 requirement for non-federal elections as well.</p> <p>16 Q And is another major difference between UOCAVA and 17 other absentee voters that UOCAVA voters may submit 18 their ballots and their requests for ballots via 19 e-mail and fax when other voters may not?</p> <p>20 A Yes, that's correct.</p> <p>21 Q At the current time all other absentee vote by mail 22 voters get a paper ballot in the mail and that's 23 it; right?</p> <p>24 A That would be correct, they would get a paper 25 ballot in the mail. With the addition, of course,</p>

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<p style="text-align: right;">Page 125</p> <p>1 that we already talked about the option for the</p> <p>2 delivery of voting equipment to individuals by</p> <p>3 traveling board.</p> <p>4 Q All right. So you mentioned that there is a form</p> <p>5 and that it's prescribed by statute. Let's go</p> <p>6 ahead and mark an exhibit as Exhibit 4.</p> <p>7 MS. BRANDT-YOUNG: The name of the file is</p> <p>8 fpca2013 - FVAP postcard application. And for</p> <p>9 anyone who would like to take a look at this form</p> <p>10 by opening it on their own computer, please go</p> <p>11 ahead. I'm sharing the screen.</p> <p>12 Q All right. Do you see a document, sir?</p> <p>13 A Yes, I do.</p> <p>14 Q Good. So this is entitled Voter Registration and</p> <p>15 Absentee Ballot Request. I'm going to represent to</p> <p>16 you that we downloaded it from fvap.gov and that we</p> <p>17 got to fvap.gov through a link to the</p> <p>18 Indiana Government Secretary of State ways to vote</p> <p>19 elections of military and overseas voters page. As</p> <p>20 far as I'm concerned, this is linked to from that</p> <p>21 page. Do you recognize this document?</p> <p>22 A Yes, I do.</p> <p>23 Q Tell me what this is.</p> <p>24 A This is the form that we referenced earlier. It's</p> <p>25 unique in that it's a combined form, it performs</p>	<p style="text-align: right;">Page 127</p> <p>1 a member of the military as a reason to qualify to</p> <p>2 receive the Indiana application. That was</p> <p>3 subsequently amended to remove that reference so</p> <p>4 that military and overseas voters generally could</p> <p>5 benefit from the broader application of the FPCA</p> <p>6 application, which as I indicated has a longer</p> <p>7 duration than an ordinary absentee application.</p> <p>8 But no, there's not been any comparable Indiana</p> <p>9 form developed for voter registration and absentee</p> <p>10 purposes.</p> <p>11 Q And broadly aside from the Indiana state website,</p> <p>12 where else in Indiana can you find this form?</p> <p>13 A I would hazard a guess that under UOCAVA the FVAP</p> <p>14 program makes a great deal of effort to outreach to</p> <p>15 the military, which I assume includes armed forces</p> <p>16 recruitment offices, among other sites, and that</p> <p>17 there may very well be examples of this form</p> <p>18 available either in those locations or other</p> <p>19 military installations that would have inquiries</p> <p>20 that would lead for this form to be produced.</p> <p>21 Q If someone asked the Indiana Election Division to</p> <p>22 provide this form in large print or braille, would</p> <p>23 it do so?</p> <p>24 A The Election Division has not made a decision</p> <p>25 regarding doing that, but the Election Division</p>
<p style="text-align: right;">Page 126</p> <p>1 two purposes. It allows an individual to both</p> <p>2 register to vote and, of course, to update an</p> <p>3 existing voter registration and also to request an</p> <p>4 absentee ballot for any election conducted during a</p> <p>5 twelve-month period, the calendar year in which the</p> <p>6 form is filed, so in Indiana's case both the May</p> <p>7 primary and the November general election.</p> <p>8 Q And is this form, in fact, linked to from the</p> <p>9 Secretary of State's website?</p> <p>10 A Yes, I believe so.</p> <p>11 Q As I understand it, this is literally the federal</p> <p>12 form developed by the Federal Government. Is that</p> <p>13 right?</p> <p>14 A That is correct, it is developed by the</p> <p>15 Federal Government. Recently the FVAP program was</p> <p>16 soliciting comments from election administrators</p> <p>17 throughout the United States for possible</p> <p>18 improvements to the form, and so it is nationally</p> <p>19 used and recognized.</p> <p>20 Q So as of December 2020, had Indiana ever developed</p> <p>21 a state-specific version of this form?</p> <p>22 A No, I don't believe so. Not with regard to the</p> <p>23 voter registration and absentee ballot request. We</p> <p>24 did have language on the absentee by mail form</p> <p>25 beginning in December of 2020 that referenced being</p>	<p style="text-align: right;">Page 128</p> <p>1 would certainly explore the practicality of doing</p> <p>2 so to make certain that providing it in large print</p> <p>3 would not raise any legal issues with regard to the</p> <p>4 acceptance of the form for processing at the county</p> <p>5 level or under federal statute. Our position has</p> <p>6 been with our own state-prescribed forms that so</p> <p>7 long as the content remains unchanged that font</p> <p>8 size and other attributes of the form can be</p> <p>9 changed without raising any legal issues. I would</p> <p>10 assume the same would be true with the federal</p> <p>11 form, but I have no idea regarding the federal</p> <p>12 statute's prescriptions about that.</p> <p>13 Q So is it fair to say that in the past there's no</p> <p>14 set written policy on providing this form in</p> <p>15 alternative formats?</p> <p>16 A Yes, I believe that's correct.</p> <p>17 Q Do you know if the Indiana Election Division ever</p> <p>18 has provided this form in an alternate format to</p> <p>19 anyone?</p> <p>20 A Not to my knowledge, no.</p> <p>21 Q Regarding the form that is linked to from the</p> <p>22 Indiana Secretary of State's website, is that form</p> <p>23 available directly on any website of the State of</p> <p>24 Indiana as opposed to a link-through as I found it</p> <p>25 on the SOS website?</p>

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<p style="text-align: right;">Page 129</p> <p>1 A Yes. I'm sure I have access to directly on the 2 fvap.gov site.</p> <p>3 Q Is it directly on any website run by the State of 4 Indiana?</p> <p>5 A Not that I am familiar with. I think the rationale 6 for that might be that we would not be in a 7 position where revisions were made to the federal 8 form that were not updated to be reflected on an 9 Indiana state website.</p> <p>10 Q Are you aware of whether the form as provided on 11 the Federal Government's website is accessible for 12 use by screen readers?</p> <p>13 A I do not know directly, but I know that FVAP along 14 with other federal agencies certainly have made 15 efforts in the past to improve the usability of 16 their websites for voters with print disabilities, 17 visual disabilities in general. I am aware that in 18 Indiana the Secretary of State's site has been 19 upgraded to receive the AAA ranking under the 20 World Wide Web Consortium 2.1 standard, and I 21 assume that other agencies, particularly those that 22 operate at the federal level, are aware of the 23 benefits of doing so so that screens have 24 sufficient contrast and are otherwise usable by 25 these types of voters.</p>	<p style="text-align: right;">Page 131</p> <p>1 you could not avail yourself of the UOCAVA voting 2 system without using the form prescribed by the 3 Federal Government.</p> <p>4 Q To whom does a voter return this form?</p> <p>5 A Voter returns the form eventually to the county 6 voter registration official of the county in which 7 they reside. It may, of course, come through the 8 State but is directly forwarded on to the 9 appropriate county voter registration office. 10 Majority of Indiana counties that is the circuit 11 court clerk. There are six counties that have 12 separate bipartisan boards of voter registration 13 that might receive it instead of the circuit court 14 clerk. But it would be a voter registration 15 official at each county level.</p> <p>16 Q And this form can be returned by e-mail or fax; 17 correct?</p> <p>18 A That's correct.</p> <p>19 Q So the signature on the form doesn't have to be an 20 original wet ink signature, a fax or e-mail capture 21 of that signature is sufficient; is that correct?</p> <p>22 A That's correct. That's assuming that an original 23 signature is affixed to the federal form, yes.</p> <p>24 Q I apologize. I meant when someone downloads the 25 FVAP form from the Federal Government, they print</p>
<p style="text-align: right;">Page 130</p> <p>1 Q All right. So we will get into that in plenty of 2 detail shortly. Aside from filling out this form 3 and sending it in via e-mail or fax or paper 4 through the United States postal mail, is there any 5 all online method of registering as a UOCAVA voter, 6 for instance, but not limited to, through 7 indianavoters.com?</p> <p>8 A To repeat your question, I take that to mean 9 excluding the FVAP form that we have displayed on 10 the screen. Then the answer would be yes, it is 11 possible to submit a voter registration application 12 and an absentee application, although they are 13 separate documents, online, assuming that the 14 individual who's a registered voter has a signature 15 that was captured on their Bureau of Motor Vehicles 16 driver's license or their State of Indiana ID card.</p> <p>17 Q And that's through the system at indianavoters.com?</p> <p>18 A Yes.</p> <p>19 Q And specifically on indianavoters.com, you can 20 register to be part of the UOCAVA program?</p> <p>21 A No. I would not say that you can register to be 22 part of the UOCAVA program, in that the application 23 that's provided for voter registration application 24 are the state-prescribed applications, not the 25 federal form that we have displayed here. So no,</p>	<p style="text-align: right;">Page 132</p> <p>1 it out, they sign it, at that point they have the 2 ability to send it to their county election 3 officials by either snail mail -- U.S. postal mail, 4 I should say -- e-mail, or fax; correct?</p> <p>5 A Yes, that's correct.</p> <p>6 Q And if it's submitted by e-mail or fax, it's not 7 going to contain the original ink from that 8 signature; right?</p> <p>9 A That's correct, it would be a facsimile.</p> <p>10 Q Okay. So let's finish up with this exhibit and 11 mark another one.</p> <p>12 MS. BRANDT-YOUNG: The title for this for 13 anyone following along is County Summaries Marion 14 2012&2020 (ACBI1543 & ACBI1932).</p> <p>15 Q Do you see an Indiana Absentee Comprehensive 16 Tracking County Summary, sir?</p> <p>17 A Yes, I do.</p> <p>18 Q Great. We'll note that this was selected out of 19 Defendants' document production. This particular 20 page is ACBI 1543. Have you ever seen either this 21 document or a document in substantially this form 22 before, sir?</p> <p>23 A Yes, I have.</p> <p>24 Q What is it?</p> <p>25 A It is a report generated from the election</p>

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<p style="text-align: right;">Page 133</p> <p>1 management portion of our Statewide Voter 2 Registration System that provides information 3 regarding the absentee ballot activity, in this 4 case for a particular county. It can also be 5 generated to provide that information statewide. 6 Q And this one states that it's from Marion County? 7 A Yes. 8 Q It's the totals for the 2012 general election. Is 9 this the type of report that you were explaining 10 before that you had reviewed? I understand this is 11 a county-wide one instead of a statewide one, but 12 is this generally the type of report that you 13 reviewed in preparation for your deposition? 14 A Yes, that's correct. It was a statewide level as 15 opposed to a county report. 16 Q So the database is capable of producing a statewide 17 report that contains the same information that 18 appears here? 19 A Yes, that's correct. 20 Q And fair to say that it tracks both absentee voting 21 applications and absentee ballots cast? 22 A Yes, that's right. 23 Q Looking at it, voting by mail is the U.S. postal 24 mail? 25 A Yes, that's right.</p>	<p style="text-align: right;">Page 135</p> <p>1 A Yes, you can. It may cause some confusion at the 2 county office, but it can be sorted out and is 3 perfectly within the law. 4 Q All right. So let's discuss receiving and 5 returning your ballot by fax. To participate in 6 that, obviously you have to have access to fax 7 services; right? 8 A Correct. 9 Q The voter does and each county board of elections 10 does as well; right? 11 A I'm not sure I understand exactly what your 12 question is. The voter and the county election 13 board have? 14 Q Both must have access to fax services in order to 15 complete such a ballot. 16 A Yes, I would assume so. Of course, I recognize 17 that there are developing technologies with regard 18 to fax that have resembled more of an e-mail than a 19 traditional fax, but yes, that's essentially 20 correct. 21 Q Are there any technical requirements in place for 22 the machines or systems that participate in this 23 fax program? 24 A No. They simply have to be able to function 25 accurately.</p>
<p style="text-align: right;">Page 134</p> <p>1 Q Voting in person is voting at an elections office; 2 is that right? 3 A Correct. 4 Q And then the traveling board, the fax, and the 5 e-mail are all as advertised? 6 A Yes, as we've previously discussed, that's right. 7 Q Thank you. And these forms are capable of being 8 produced for every county and statewide for every 9 election; is that right? 10 A Yes, that's correct. 11 Q Okay. So I'd just like to skip to page 2 now. 12 This is ACBI 1932. To me this looks like same 13 thing, Marion County absentee voting but for the 14 2020 general election. Is that right? 15 A Yes, I believe so. 16 Q All right. I think we can stop sharing that one. 17 So you said previously that UOCAVA voters can ask 18 that a ballot be transmitted to them by either 19 postal mail, e-mail, or fax; is that correct? 20 A That's correct. 21 Q And they can return their completed ballot by those 22 same methods; is that right? 23 A That's correct. 24 Q Can you receive your ballot by one method and 25 return it by a different one?</p>	<p style="text-align: right;">Page 136</p> <p>1 Q So a fax machine would count? 2 A Fax machine would be the method that was originally 3 in existence when the statute was enacted, and so 4 yes. 5 Q So a fax machine that is from 1980 would be allowed 6 to participate in this program? 7 A Yes. 8 Q The fax function on a copier would work? 9 A Presumably, yes. Again, as long as it is a fax in 10 whatever form the technology takes, it would come 11 under that definition. 12 Q And as you mentioned, fax to e-mail functions would 13 be permitted; is that right? 14 A Yes, that's correct. 15 Q There are certain online fax functions as well that 16 are permitted here? 17 A Again, I assume so. The definition of fax 18 transmission is very broad. It's not technology 19 specific. 20 Q Do you know what kind of fax system every county 21 uses? 22 A No, I do not know in precise detail. There's 23 obviously considerable variation and faxes are 24 generally becoming less popular in their 25 traditional original mode and so that may change</p>

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<p style="text-align: right;">Page 137</p> <p>1 daily.</p> <p>2 Q Are there any requirements for what kind of paper</p> <p>3 the fax machines can use?</p> <p>4 A No.</p> <p>5 Q Are there any requirements for where physically in</p> <p>6 the voting office that the fax machine has to be</p> <p>7 located?</p> <p>8 A No, there are no such requirements.</p> <p>9 Q Are there any requirements for securing the data</p> <p>10 channel for the faxes?</p> <p>11 A Can I ask you to clarify what you mean by data</p> <p>12 channel?</p> <p>13 Q In my head -- and I am a lawyer, not a technology</p> <p>14 specialist --</p> <p>15 A I share those attributes, yes.</p> <p>16 Q -- I think of a fax as being transmitted over a</p> <p>17 phone line. As you've pointed out, that's not the</p> <p>18 only way to send a fax anymore. Are there any</p> <p>19 requirements for securing the phone line or</p> <p>20 whatever it is that is transmitting the fax?</p> <p>21 A No, there are no statutory requirements for that</p> <p>22 particular point.</p> <p>23 Q When people fax in those ballots, someone at the</p> <p>24 county board of elections transcribes their choices</p> <p>25 onto paper that can go into the ballot counting</p>	<p style="text-align: right;">Page 139</p> <p>1 Q Could somebody use a fax machine from a public</p> <p>2 library or a FedEx in the system?</p> <p>3 A Yes.</p> <p>4 Q Is there any requirement that the fax number that</p> <p>5 the county board sends the fax to is the same</p> <p>6 number that it gets the ballot back from?</p> <p>7 A No, there's no such statutory requirement. The</p> <p>8 county, assuming that it's granted the absentee</p> <p>9 ballot application, it is required to use the fax</p> <p>10 number that's been provided for return; but if for</p> <p>11 some reason there's been an error in transcription</p> <p>12 of the number or the fax is having a technological</p> <p>13 difficulty, the statute provides a backup that the</p> <p>14 county is then to proceed to mail the ballot to the</p> <p>15 person as a failsafe measure.</p> <p>16 Q Is there any checking to see if the number that a</p> <p>17 fax is going to is being spoofed by some other</p> <p>18 number?</p> <p>19 A No, I'm not aware of any such checking. There's</p> <p>20 none required by statute.</p> <p>21 Q Is there any encryption of faxes sent pursuant to</p> <p>22 this program?</p> <p>23 A I am not aware of any encryption that occurs at</p> <p>24 either the state or county level. Of course, I</p> <p>25 can't speak with regard to what the sender might</p>
<p style="text-align: right;">Page 138</p> <p>1 machine; is that right?</p> <p>2 A Actually it requires a bipartisan team of</p> <p>3 individuals that are colloquially referred to as</p> <p>4 the remake team who attempt to capture the voter's</p> <p>5 choices on a duplicate ballot, which is serially</p> <p>6 numbered along with the original fax document so</p> <p>7 that in the event of an election recount or contest</p> <p>8 it's possible to reconstruct the activity that the</p> <p>9 remake team conducted to ensure that their</p> <p>10 reproduction was correct.</p> <p>11 Q Are those guidelines set out anywhere?</p> <p>12 A The guidelines are largely statutory. In terms of</p> <p>13 the remake team's ability and the serial number</p> <p>14 requirement, those are all statutory.</p> <p>15 Q Are they summarized in the Election Administrator's</p> <p>16 Manual?</p> <p>17 A Yes, I believe so.</p> <p>18 Q Okay. So you said that there are no technical</p> <p>19 requirements for fax systems participating in this</p> <p>20 program from the county board of elections side.</p> <p>21 Are there any requirements in place for fax systems</p> <p>22 of the individuals faxing things in?</p> <p>23 A No, there are none. Assuming that it can perform</p> <p>24 its proper function and transmit the document, then</p> <p>25 it suffices.</p>	<p style="text-align: right;">Page 140</p> <p>1 have for encryption, but . . .</p> <p>2 Q All right. So fax is one way to receive and return</p> <p>3 a ballot under the UOCAVA program. E-mail is</p> <p>4 another way to receive and return a ballot under</p> <p>5 the UOCAVA program. Are there any technical or</p> <p>6 security requirements in place for county e-mail</p> <p>7 systems that are participating in the UOCAVA e-mail</p> <p>8 program?</p> <p>9 A There are not statutory restrictions with regard to</p> <p>10 the e-mails. However, the Election Division has</p> <p>11 over several years since the Indiana statute</p> <p>12 authorizing the use of e-mails under this program</p> <p>13 indicated to county clerks or the equivalent in a</p> <p>14 county that the e-mail address should be a county</p> <p>15 government e-mail and we would raise questions and</p> <p>16 concerns if we saw what appeared to be a personal</p> <p>17 e-mail address being given as the one to use for</p> <p>18 providing the returned e-mail ballot.</p> <p>19 Q Are there any technical or security requirements</p> <p>20 around the domains for the e-mail system? I</p> <p>21 understand it has to be a government e-mail</p> <p>22 address. Any other requirements for those?</p> <p>23 A No, not that I'm aware of.</p> <p>24 Q Are there any technical or security requirements</p> <p>25 for the servers participating on the board of</p>

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<p style="text-align: right;">Page 141</p> <p>1 elections side in the e-mail program?</p> <p>2 A That specifically relate to the use of an e-mail</p> <p>3 ballot, no, I'm not aware of any specific security</p> <p>4 requirements.</p> <p>5 Q I understand there aren't any guidelines that apply</p> <p>6 to the UOCAVA program and to nothing else. Are</p> <p>7 there any other security or technical requirements</p> <p>8 that apply to the e-mail domain servers that county</p> <p>9 boards of elections are using generally?</p> <p>10 A I'm not sure I understand the scope of your</p> <p>11 question. Are you referring to for election</p> <p>12 administration or some part of election</p> <p>13 administration?</p> <p>14 Q Well, that would encompass e-mails sent under the</p> <p>15 UOCAVA program, yes.</p> <p>16 A Yes. So I'm sorry to belabor it, but could you</p> <p>17 repeat the question so I understand the context?</p> <p>18 Q First of all, please, I want to make sure that you</p> <p>19 understand the question so that we can give each</p> <p>20 other the information we need.</p> <p>21 A Yes.</p> <p>22 Q What I am envisioning, for instance, is that I have</p> <p>23 an academic e-mail address. It is, quote/unquote,</p> <p>24 powered by Gmail, although the domain name doesn't</p> <p>25 reflect Gmail in it.</p>	<p style="text-align: right;">Page 143</p> <p>1 the credentials, certifications, training for</p> <p>2 people who administer the county boards of</p> <p>3 elections' e-mail domains or servers?</p> <p>4 A That's correct.</p> <p>5 Q Okay. Are there any recommendations or</p> <p>6 requirements for maintaining the security of those</p> <p>7 e-mail domains or servers?</p> <p>8 A Not that the Election Division has issued. I am</p> <p>9 certain that there are recommendations that state</p> <p>10 and federal agencies may have generally with that</p> <p>11 regard, but none specifically from the</p> <p>12 Election Division.</p> <p>13 Q And none that the Election Division oversees?</p> <p>14 A Not that I'm aware of, no.</p> <p>15 Q In terms of e-mail ballots, when UOCAVA ballots are</p> <p>16 e-mailed to the voter, what electronic format are</p> <p>17 those ballots in?</p> <p>18 A The ballot would vary from county to county but</p> <p>19 would essentially be a duplication of the ballot</p> <p>20 that is used for absentee ballot by mail and would</p> <p>21 be, I presume, a .pdf that the voter would then be</p> <p>22 able to access, print, and then return in that</p> <p>23 format. In particular, since iPhones with camera</p> <p>24 capabilities have become almost universal, that is</p> <p>25 the format that I understand most of the e-mail</p>
<p style="text-align: right;">Page 142</p> <p>1 A I see.</p> <p>2 Q So I'm wondering whether there are any technical or</p> <p>3 security requirements that apply to e-mail either</p> <p>4 servers or domains for county boards of elections</p> <p>5 generally that they have to comply with.</p> <p>6 A No, there are no legal requirements in that regard.</p> <p>7 Q What about the e-mail systems that happen on the</p> <p>8 voter's side of this equation? Are there any</p> <p>9 technical or security requirements that apply to</p> <p>10 the e-mail domains and servers that they use?</p> <p>11 A No, there are not.</p> <p>12 Q Are voters who administer and host their own e-mail</p> <p>13 domains and servers allowed to participate in this</p> <p>14 program?</p> <p>15 A Yes. There is no distinction made between those</p> <p>16 voters or other voters similarly situated.</p> <p>17 Q Are there any credentials or certifications or</p> <p>18 training required for the people who run the county</p> <p>19 boards of elections' e-mail domains or servers?</p> <p>20 A Not under the election statutes. I can't speak to</p> <p>21 what requirements might be imposed by a county</p> <p>22 generally with regard to its staff, but no, not at</p> <p>23 the state- or election-specific level that I'm</p> <p>24 aware of.</p> <p>25 Q So no state- or election-specific requirements for</p>	<p style="text-align: right;">Page 144</p> <p>1 ballots are returned. They are attachments of a</p> <p>2 photographed voted ballot linked to an e-mail.</p> <p>3 Q So is it fair to say that there's no requirement</p> <p>4 for the electronic format that the ballot goes out</p> <p>5 in?</p> <p>6 A That's correct. There's nothing specified in</p> <p>7 statute regarding that.</p> <p>8 Q But most of the time you would expect it to be a</p> <p>9 .pdf ballot?</p> <p>10 A That would be my assumption. Again, each county is</p> <p>11 going to be e-mailing out their version of the</p> <p>12 ballot, which could vary from county to county. I</p> <p>13 don't have any specific knowledge with regard to</p> <p>14 what each of the 92 counties would do.</p> <p>15 Q Is there any reason to think that .pdf ballots are</p> <p>16 fillable and tagged as opposed to just image</p> <p>17 .pdf's?</p> <p>18 A Well, I am familiar enough with technology to know</p> <p>19 that it is difficult but not impossible to modify a</p> <p>20 .pdf, and so I would hazard a guess that those</p> <p>21 counties which have the ability to send ballots</p> <p>22 without using .pdf format might choose to do so and</p> <p>23 that those that do might choose to provide</p> <p>24 instruction about how the choices could be</p> <p>25 indicated on the .pdf by altering it. But, again,</p>

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<p style="text-align: right;">Page 145</p> <p>1 that's speculation on my part.</p> <p>2 Q Fair to say you're not aware of any county ever</p> <p>3 sending a fillable tagged .pdf ballot?</p> <p>4 A I'm not aware of it, no.</p> <p>5 Q Are you aware of any county ever choosing to send</p> <p>6 an HTML-formatted ballot?</p> <p>7 A No. I don't have any specific county that I'm</p> <p>8 aware of that's done that.</p> <p>9 Q And you said the IED does not issue any guidance or</p> <p>10 requirements for counties when they're formatting</p> <p>11 these ballots; is that right?</p> <p>12 A When you use the term formatting, I'm assuming</p> <p>13 you're using that in the technological sense as</p> <p>14 opposed to the statutory requirements for the</p> <p>15 format of the ballot. So if that's the question,</p> <p>16 then the answer is no, there is no</p> <p>17 Election Division guidance with regard to that type</p> <p>18 of formatting.</p> <p>19 Q Thank you. Yes, my question was meant to indicate</p> <p>20 electronic formatting as opposed to changes that</p> <p>21 would be evident when a ballot is printed out on</p> <p>22 paper.</p> <p>23 A Same here.</p> <p>24 Q Good. So no guidance from the IED around the</p> <p>25 electronic formatting of ballots; correct?</p>	<p style="text-align: right;">Page 147</p> <p>1 explicitly waives the secrecy of the ballot -- but</p> <p>2 yes, that's correct.</p> <p>3 MS. BRANDT-YOUNG: Okay. So let's take a look</p> <p>4 at another document. We'll be marking as Exhibit 6</p> <p>5 a file called Cover Sheet and Affidavit for Absent</p> <p>6 Uniformed Services and Overseas Voters.</p> <p>7 Q All right. Sir, do you see a form up on your</p> <p>8 screen?</p> <p>9 A Yes, I do.</p> <p>10 Q Do you recognize that?</p> <p>11 A Yes, I do.</p> <p>12 Q What is that?</p> <p>13 A This is the cover sheet and affidavit that we just</p> <p>14 referred to with regard to the UOCAVA voters</p> <p>15 providing information at the top for the cover</p> <p>16 sheet directed to the county election board</p> <p>17 providing -- or rather addressed to the e-mail or</p> <p>18 fax number of the county election board and</p> <p>19 specifying the election. What I just referenced is</p> <p>20 to be completed by the county election board. The</p> <p>21 segment below that is to be completed by the voter</p> <p>22 and contains voter's name, telephone number if</p> <p>23 available, and the e-mail and fax and mailing</p> <p>24 information. Then finally an affirmation by the</p> <p>25 applicant that they qualify as one of several types</p>
<p style="text-align: right;">Page 146</p> <p>1 A That would be correct.</p> <p>2 Q All right. Are you aware of whether any county</p> <p>3 checks those ballots before they are sent out to</p> <p>4 see if they are accessible for use with screen</p> <p>5 readers and other assistive technology?</p> <p>6 A I am not aware of any county that does so. They</p> <p>7 may very well, but I'm not aware of it.</p> <p>8 (Ms. Robaidek re-joined the deposition at this</p> <p>9 time.)</p> <p>10 Q And there's no guideline from the Election Division</p> <p>11 instructing them to do so; correct?</p> <p>12 A There is no guideline from the Election Division</p> <p>13 instructing them to do so.</p> <p>14 Q Okay. As I understand it -- and you tell me if</p> <p>15 this is right -- when absentee ballot materials are</p> <p>16 transmitted to the voter, there are up to four</p> <p>17 things that could be sent to an absentee by mail</p> <p>18 voter. The ballot itself is one, the state voter</p> <p>19 bill of rights --</p> <p>20 A The absentee voter bill of rights.</p> <p>21 Q -- is another, a privacy waiver is another one, and</p> <p>22 possibly some instructions from the county board,</p> <p>23 which would vary from county to county. Do I have</p> <p>24 that right?</p> <p>25 A Yes. We refer to it as a secrecy waiver -- it</p>	<p style="text-align: right;">Page 148</p> <p>1 of UOCAVA voters.</p> <p>2 And the language above the signature is one</p> <p>3 that is prescribed actually by the</p> <p>4 Federal Government and contains some language that</p> <p>5 is not really applicable in Indiana but we're</p> <p>6 required by federal law to use it, such as having</p> <p>7 been adjudicated mentally incompetent. That's not</p> <p>8 a reason in Indiana for disfranchisement. And then</p> <p>9 below that, the signature of the voter, is the</p> <p>10 voluntary waiver of the secret ballot where the</p> <p>11 voter states their understanding that by faxing or</p> <p>12 e-mailing the voted ballot they're voluntarily</p> <p>13 waiving their right to a secret ballot.</p> <p>14 Q And is that because the ballot has to be</p> <p>15 transcribed onto a page that the voting equipment</p> <p>16 can read?</p> <p>17 A That is at least part of it. But even before that</p> <p>18 when the document arrives either by fax or is</p> <p>19 printed out in an e-mail, it is not contained</p> <p>20 within the secrecy envelope that an absentee ballot</p> <p>21 that's sent by mail and returned by mail, for</p> <p>22 example, is included in. Therefore, the person who</p> <p>23 takes the paper off of the fax machine or opens and</p> <p>24 prints the e-mail, despite their best efforts, will</p> <p>25 not be unable to at least have the opportunity to</p>

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<p style="text-align: right;">Page 149</p> <p>1 see information regarding the voter's ballot and</p> <p>2 the choices they made.</p> <p>3 Q And is the signature here similar to the signature</p> <p>4 on the FVAP form, in that someone needs to sign it</p> <p>5 by hand but the e-mail or fax will transmit it as</p> <p>6 facsimile of that signature rather than the</p> <p>7 original ink of that signature?</p> <p>8 A Yes, that's correct.</p> <p>9 Q So in order to cast a ballot according to the</p> <p>10 system, you have to have access to a printer at</p> <p>11 some point; right? You're going to have to print</p> <p>12 this form out?</p> <p>13 A Yes. I would assume you would have to print it</p> <p>14 out, yes.</p> <p>15 Q And then you would have to sign it and scan it back</p> <p>16 in in some way? And you mentioned that taking a</p> <p>17 photograph with a phone is one way to do that; is</p> <p>18 that right?</p> <p>19 A Yes, that's correct.</p> <p>20 Q And in order to sign it, they have to find the</p> <p>21 signature line? They have to know where it is?</p> <p>22 A That's correct.</p> <p>23 Q What happens if someone signs this form in the</p> <p>24 wrong place, not on the signature line but</p> <p>25 somewhere else on the form?</p>	<p style="text-align: right;">Page 151</p> <p>1 the box that reads voluntary waiver, that would be</p> <p>2 problematic I think for the Election Division to</p> <p>3 make a blanket statement to that effect.</p> <p>4 Q Is there anything in Indiana law that prohibits the</p> <p>5 two signatures required on this form from being</p> <p>6 provided on two separate pages, so that the</p> <p>7 affirmation by the applicant could appear on page 1</p> <p>8 and the voluntary waiver of the secret ballot could</p> <p>9 appear on page 2?</p> <p>10 A No, I don't believe so. Because, again, parts of</p> <p>11 this form are prescribed by federal law, and so I'm</p> <p>12 not aware of any federal prohibition that would</p> <p>13 come into play here and so I think the answer is</p> <p>14 probably yes, assuming that there's discretion</p> <p>15 under the federal regulations.</p> <p>16 Q If the two things that this form currently does and</p> <p>17 contains signature boxes for were split onto</p> <p>18 separate pages, is there anything that would</p> <p>19 prevent the Indiana Election Division from</p> <p>20 instructing county boards of elections to accept a</p> <p>21 signature that appears anywhere on the face of each</p> <p>22 of the two pages of the form?</p> <p>23 A There is nothing that would prohibit the</p> <p>24 Election Division from doing so, assuming that that</p> <p>25 is the correct understanding of what's required</p>
<p style="text-align: right;">Page 150</p> <p>1 A The county election board would be confronted with</p> <p>2 what it might consider an incomplete application,</p> <p>3 because the statute specifically requires the</p> <p>4 execution and return of the voluntary waiver of the</p> <p>5 secret ballot. So if it was unclear that, in fact,</p> <p>6 the voter had intended and actually voluntarily</p> <p>7 waived their rights as documented on this form,</p> <p>8 then the county would be required to contact the</p> <p>9 voter to inform them that we're sorry but we need</p> <p>10 for you to give this another try and if you omitted</p> <p>11 the signature or you misplaced the signature on the</p> <p>12 form to have it appear in the right place to</p> <p>13 document that you did voluntarily waive your right.</p> <p>14 I would just add editorially my assumption is</p> <p>15 that counties would typically be generous in their</p> <p>16 review of the form and would give the voter benefit</p> <p>17 of the doubt if there was any way to reasonably</p> <p>18 construe it as having been signed.</p> <p>19 Q So theoretically could the Election Division</p> <p>20 instruct the counties to accept a signature that</p> <p>21 appears anywhere on the face of this form?</p> <p>22 A Theoretically the Election Division could, but it</p> <p>23 would require I think some degree of deliberation</p> <p>24 as to how literally to take your question when you</p> <p>25 refer to anywhere. If there is no obvious link to</p>	<p style="text-align: right;">Page 152</p> <p>1 under the federal regulations. Again, this form is</p> <p>2 a special case because it's not prescribed by our</p> <p>3 office. There are restrictions about altering</p> <p>4 forms that are purely state forms. So the answer</p> <p>5 to your question is no, I don't believe that there</p> <p>6 is a prohibition that would prevent the</p> <p>7 Election Division from making that determination.</p> <p>8 Q Thank you. We can stop sharing that document. And</p> <p>9 if you could just give me a moment, I have a note</p> <p>10 on another page that I need to find.</p> <p>11 A Certainly.</p> <p>12 (Attorney reviewing notes)</p> <p>13 Q All right. So stepping back for a moment. The</p> <p>14 Indiana Election Division communicates with voters</p> <p>15 all the time; right?</p> <p>16 A Correct.</p> <p>17 Q It takes phone calls. It has a website. Are there</p> <p>18 other forms in which that communication can take</p> <p>19 place?</p> <p>20 A Certainly. It can take place by letter, by a</p> <p>21 personal visit to the Election Division office, and</p> <p>22 I'm sure there are additional ones.</p> <p>23 Q We said previously as to the FVAP form there's no</p> <p>24 formal policy of the Indiana Election Division</p> <p>25 making forms available or having communications</p>

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<p style="text-align: right;">Page 153</p> <p>1 generally in alternate formats; is that right?</p> <p>2 A That's correct, there's no Election Division policy</p> <p>3 in that respect.</p> <p>4 Q Are you aware of anyone ever requesting to have</p> <p>5 communications with the Indiana Election Division</p> <p>6 in an alternate format like large print or braille?</p> <p>7 A No. In the time that I've been at the</p> <p>8 Election Division, I cannot recall an instance of</p> <p>9 that occurring.</p> <p>10 Q Are there any instructions anywhere explaining to</p> <p>11 voters how to do so?</p> <p>12 A Not that are specific to the Election Division.</p> <p>13 Q Are you aware of that guidance being issued by</p> <p>14 anyone?</p> <p>15 A I am not aware of that guidance being issued by</p> <p>16 anyone, but my supposition is that the State</p> <p>17 information desk, if you will, may have guidance</p> <p>18 and instructions to respond to inquiries in those</p> <p>19 formats.</p> <p>20 Q Do you have any opinions about that guidance? Is</p> <p>21 it known to be helpful or unhelpful?</p> <p>22 A I don't have any opinions derived from direct</p> <p>23 experience, but I would assume it would be helpful</p> <p>24 to an individual who needed it by that method, yes.</p> <p>25 Q All right. So just to make sure that I am clear on</p>	<p style="text-align: right;">Page 155</p> <p>1 A No, none that I'm aware of.</p> <p>2 Q As far as you're aware, no analysis of that kind at</p> <p>3 all?</p> <p>4 A That is correct.</p> <p>5 Q Likewise, has there ever been any analysis at the</p> <p>6 Election Division that providing communications in</p> <p>7 alternative formats would provide an administrative</p> <p>8 burden?</p> <p>9 A No, there's been no analysis of that.</p> <p>10 Q Nothing in writing?</p> <p>11 A No, nothing that I can recall ever seeing in</p> <p>12 writing or discussed.</p> <p>13 Q So nothing in writing, no conversations, as far as</p> <p>14 you know, nothing at all; is that right?</p> <p>15 A Yes, that's correct.</p> <p>16 Q And are you aware of any determination by the IED</p> <p>17 that providing communications in alternate formats</p> <p>18 would be an undue financial burden?</p> <p>19 A No. I have never heard any discussion or seen any</p> <p>20 documentation regarding that issue.</p> <p>21 Q So no determinations, nothing in writing, no</p> <p>22 conversations, not aware of that at all; is that</p> <p>23 right?</p> <p>24 A That's correct.</p> <p>25 MS. BRANDT-YOUNG: Okay. All right. I think</p>
<p style="text-align: right;">Page 154</p> <p>1 this. So there's no guidance for the Indiana</p> <p>2 Election Division that it issues for itself or for</p> <p>3 county boards of elections in providing</p> <p>4 communications in alternate formats. That's right?</p> <p>5 A That's correct. Other than, as I mentioned, the</p> <p>6 provisions for requiring the use of magnifiers at</p> <p>7 polling places, which are statutory, but beyond</p> <p>8 that, no.</p> <p>9 Q You mentioned that the Indiana Election Division is</p> <p>10 not opposed to doing that in appropriate</p> <p>11 circumstances; is that right?</p> <p>12 A That would be my opinion, yes.</p> <p>13 Q You're the co-director.</p> <p>14 A I am the co-director. I feel comfortable in saying</p> <p>15 that that's true.</p> <p>16 Q All right. Excellent. So that being the case, I'm</p> <p>17 assuming that no one at the Indiana Election</p> <p>18 Division has ever done an analysis suggesting that</p> <p>19 it would be a fundamental alteration of its</p> <p>20 services to provide communications in alternate</p> <p>21 formats?</p> <p>22 A That's correct, there's been no such analysis.</p> <p>23 Q So nothing reduced to writing?</p> <p>24 A No, nothing that I'm aware of.</p> <p>25 Q No conversations like that?</p>	<p style="text-align: right;">Page 156</p> <p>1 this might be a good time to take another break, if</p> <p>2 that's okay, for fifteen minutes. Is there any</p> <p>3 objection?</p> <p>4 MS. ABSHIRE: No objection.</p> <p>5 MS. BRANDT-YOUNG: Sorry. That was no</p> <p>6 objection?</p> <p>7 THE WITNESS: No objection.</p> <p>8 MS. ABSHIRE: No objection. Sorry.</p> <p>9 MS. BRANDT-YOUNG: I love a succinct lawyer.</p> <p>10 Great. So why don't we meet again at 3:20.</p> <p>11 THE WITNESS: Very good.</p> <p>12 MS. BRANDT-YOUNG: Great. Thank you very</p> <p>13 much.</p> <p>14 THE WITNESS: You're welcome.</p> <p>15 MS. ABSHIRE: Thank you.</p> <p>16 (A brief recess was taken.)</p> <p>17 Q All right. So we're back on the record at 3:23.</p> <p>18 Let's take a brief look at Exhibit 1 again. This</p> <p>19 is the 30(b)(6) notice. And can you see exhibit 3,</p> <p>20 sir?</p> <p>21 A Yes, I can.</p> <p>22 Q So this covers, All research, studies, planning,</p> <p>23 and actions taken and planned for compliance with</p> <p>24 the provisions of Senate Enrolled Act 398 of</p> <p>25 April 23, 2021, as it relates to voters with print</p>

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<p style="text-align: right;">Page 157</p> <p>1 disabilities, including but not limited to:</p> <p>2 All policies and procedures that Defendant has</p> <p>3 developed or is going to follow regarding</p> <p>4 procurement of accessible information technology</p> <p>5 products and services, for making and maintaining</p> <p>6 any information technology projects and services in</p> <p>7 an accessible state, and any --</p> <p>8 (Zoom background sound)</p> <p>9 MS. BRANDT-YOUNG: I'm sorry?</p> <p>10 THE WITNESS: No, I didn't say anything. I'm</p> <p>11 sorry.</p> <p>12 MS. BRANDT-YOUNG: Sorry. I thought I heard</p> <p>13 someone.</p> <p>14 Q -- and any anticipated challenges to complying with</p> <p>15 it.</p> <p>16 Sir, do you see that there?</p> <p>17 A I do.</p> <p>18 Q Great. Are you the most knowledgeable person at</p> <p>19 the Indiana Election Division to discuss this?</p> <p>20 A Yes, I think I would be.</p> <p>21 Q Is there anybody else at the agency who you think</p> <p>22 knows a lot about it?</p> <p>23 A Valerie Warycha, my general counsel.</p> <p>24 Q Anybody else?</p> <p>25 A I'm sure that my counterparts, co-director</p>	<p style="text-align: right;">Page 159</p> <p>1 you'll tell me if I'm wrong -- a voter with print</p> <p>2 disabilities is defined in the Indiana Code</p> <p>3 Section 3-5-2-50.3 --</p> <p>4 A Correct.</p> <p>5 Q -- as, quote, an individual who is unable to</p> <p>6 independently mark a paper ballot or ballot card</p> <p>7 due to blindness, low vision, or a physical</p> <p>8 disability that impairs manual dexterity, closed</p> <p>9 quote. Is that correct?</p> <p>10 A That is correct.</p> <p>11 Q And is it fair to say that SEA 398 is going to</p> <p>12 offer certain accommodations for voters who fall</p> <p>13 within that definition?</p> <p>14 A Yes, that's correct.</p> <p>15 Q If a voter with dyslexia can't mark a paper ballot</p> <p>16 because they can't read it because of their</p> <p>17 disability, they cannot participate in this program</p> <p>18 under SEA 398; is that correct?</p> <p>19 MS. ABSHIRE: Objection to the extent it calls</p> <p>20 for a legal conclusion.</p> <p>21 A To the extent that I'm familiar with dyslexia as a</p> <p>22 layman of any sort might be, again, if it created</p> <p>23 the visual difficulties that the definition</p> <p>24 describes, then I believe that the voter with</p> <p>25 dyslexia would be covered.</p>
<p style="text-align: right;">Page 158</p> <p>1 Angela Nussmeyer and her counsel Matthew Kochevar,</p> <p>2 would be knowledgeable, to a lesser degree.</p> <p>3 Q Is there anyone at the staff level who is</p> <p>4 knowledgeable about this topic?</p> <p>5 A No, I don't believe so.</p> <p>6 Q Who at the agency is working on things relating to</p> <p>7 this topic, other than the folks you've already</p> <p>8 mentioned?</p> <p>9 A The only other individual I can think of who would</p> <p>10 have even a tangential role would be my executive</p> <p>11 assistant, Joe McLain, who coordinates the approval</p> <p>12 of state forms with our state forms management</p> <p>13 office and performs those types of duties to assist</p> <p>14 me.</p> <p>15 Q Okay. All right. So as of today, is it correct to</p> <p>16 say that no elections have ever been administered</p> <p>17 in the state of Indiana that have put SEA 398's</p> <p>18 provisions for voters with print disabilities into</p> <p>19 effect? Is that right?</p> <p>20 A That would be correct.</p> <p>21 Q It hasn't been road tested yet, you're still</p> <p>22 developing it; is that correct?</p> <p>23 A That's correct.</p> <p>24 Q You're in process. According to the statute -- and</p> <p>25 I believe I'm reading an accurate excerpt here, but</p>	<p style="text-align: right;">Page 160</p> <p>1 Q So it's your understanding that under this</p> <p>2 definition if someone has a visual processing</p> <p>3 disorder that enables them to see everything but</p> <p>4 print, they qualify as blind or low vision under</p> <p>5 the statute?</p> <p>6 A That would be my understanding of the terminology,</p> <p>7 yes.</p> <p>8 Q To put it another way, is the common sense</p> <p>9 understanding of blindness that you can see</p> <p>10 everything except for print?</p> <p>11 A No. I think the common sense definition of</p> <p>12 blindness is that one is either totally without</p> <p>13 sight or has such a limited ability that you've</p> <p>14 been determined under applicable legal standards to</p> <p>15 be blind for purposes of operating a vehicle, for</p> <p>16 example, or other particular contexts where partial</p> <p>17 sight would not be sufficient to allow you to</p> <p>18 engage in the same activity as a fully-sighted</p> <p>19 person would.</p> <p>20 Q Same question for low vision. Do you believe the</p> <p>21 common sense understanding of low vision is that</p> <p>22 you can see everything except for print?</p> <p>23 A I don't know the extent to which there is a common</p> <p>24 understanding of low vision. I think that's a more</p> <p>25 technical term of art. It implies a gradation.</p>

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<p style="text-align: right;">Page 161</p> <p>1 But, again, I don't know that there's a common 2 consensus with regard to the coverage of it that 3 someone outside of a professional context would be 4 able to articulate and easily apply. 5 Q So nonetheless, do I understand that as the 6 co-director of the Indiana Election Division you 7 would be willing to enable county boards of 8 elections to interpret blindness and low vision or 9 a physical disability that impairs manual dexterity 10 to include people who can't read a paper ballot for 11 whatever physical or visual processing reason? 12 A Yes, that would be my understanding as co-director 13 of the Election Division. And it would also be an 14 instance where if I felt that there was not 15 consensus with regard to the definition that the 16 Election Division might suggest the 17 General Assembly qualify the definition to make the 18 distinction clear. 19 Q How long would it take to entrain that in law? 20 A Potentially a matter of weeks. The Indiana General 21 Assembly does not meet year-round -- it meets in a 22 short session that has technically already started 23 last month but really begins in January of 2022 and 24 by statute is required to adjourn by March 14 of 25 2022 -- but I am sure there will be election</p>	<p style="text-align: right;">Page 163</p> <p>1 it. 2 Q Of course. W-C-A-G. That's the Web Content 3 Accessibility Guidelines of the World Wide Web 4 Consortium. 5 A Yes, very familiar. 6 Q Excellent. I once spoke with somebody to served on 7 that consortium and helped develop those guidelines 8 and she informed me that they pronounced it WCAG. 9 A So noted. They know from whether you're around 10 here or not depending on how you say it. 11 Q I'm sure there's variation all over the world, but 12 for today I will be calling it WCAG. 13 A That's fine. And I'm sorry. Would you mind asking 14 the question again now that I've understood the 15 acronym? 16 Q Of course. Again, thank you for asking for the 17 clarification. That's how we get a good record. 18 SEA 398 requires the Secretary of State and the 19 Indiana Election Division to implement a 20 WCAG-compliant UOCAVA-based system for Indiana 21 voters with print disabilities; is that right? 22 A That's correct. 23 Q All right. 24 A It's actually the Secretary of State with the 25 approval of the Election Division.</p>
<p style="text-align: right;">Page 162</p> <p>1 legislation passed in that short session. 2 Q As you sit here today, are you aware of any contact 3 on the part of anyone in Indiana with the Indiana 4 legislature suggesting that voters with visual 5 processing disorders should be included in this 6 definition? 7 A No, I am not. Not aware of that. 8 Q Wholly hypothetically, if a court ordered the 9 Indiana Election Division to instruct county boards 10 of elections to include voters with visual 11 processing disorders in this definition, would 12 there be any reason why the Indiana Election 13 Division could not comply with that? 14 A No, I don't know of any reason why the 15 Election Division could not comply with a court 16 order. Again, with every respect to a judge, 17 sometimes there's ambiguity in court rulings that 18 require further clarification, but certainly we 19 would convey that to the county election boards. 20 Q Is it correct to say that SEA 398 will require the 21 Secretary of State and the Indiana Election 22 Division to implement a WCAG-compliant UOCAVA-based 23 system for Indiana voters with print disabilities? 24 A I believe the answer is yes. But could you spell 25 out that acronym? I couldn't quite get the gist of</p>	<p style="text-align: right;">Page 164</p> <p>1 Q Is it with the assistance of the Election Division, 2 the approval of the Election Division, both? 3 A No. The Secretary of State issues an order, as I 4 recall, under the statute and it's with the 5 approval -- I might not use the exact verbiage -- 6 of the Election Division. It requires a 7 cooperative effort. 8 Q Is it fair to say that prior to the passage of 9 SEA 398 Indiana's UOCAVA voting system was not 10 previously WCAG compliant with voters with print 11 disabilities? 12 A I believe the answer to that question is yes with 13 regard to at least the current version of the 14 standards that are incorporated into Indiana law, 15 the version 2.1. I know that the Secretary of 16 State and Election Division undertook efforts to 17 obtain the AAA rating, and so that to me implies 18 that at some point we were falling short of 19 achieving that highest ranking under the WCAG. 20 Q Is it fair to say that two important forms for the 21 prior UOCAVA system were the FVAP federal 22 application form and the secrecy waiver form? 23 A Yes. 24 Q Prior to December of 2020 did anyone check to make 25 sure that those forms were accessible for people</p>

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<p style="text-align: right;">Page 165</p> <p>1 with print disabilities and the assistive 2 technology that they use?</p> <p>3 A Not that I am aware of.</p> <p>4 Q Without those forms being WCAG compliant, the 5 system would not be WCAG compliant. Fair to say?</p> <p>6 A That would be a logical conclusion, yes.</p> <p>7 Q Okay. So, again, I can tell that we're going to 8 have to say on a fairly high-level basis can you 9 give me a summary of what you understand that WCAG 10 requires.</p> <p>11 A My general understanding, speaking, again, as a 12 person trained in a different discipline, is that 13 the major feature that's addressed by WCAG, as I'll 14 call it, involves screen contrast standards and 15 that they are measured on a numerical scale with 16 7.0 being the necessary web contrast measure that 17 must be met to achieve the AAA ranking for a 18 website.</p> <p>19 Q So you've put a number of issues in there. Which 20 version of WCAG is currently operative?</p> <p>21 A Indiana statute references version 2.1. We 22 understood while the legislation was under 23 consideration that a version 2.2 was anticipated to 24 be issued later but under our Indiana Constitution 25 the General Assembly is not permitted to</p>	<p style="text-align: right;">Page 167</p> <p>1 WCAG, as I'll start to use the acronym in the way 2 I've learned to say HAVA, but it's not a set of 3 standards that I have a detailed technical 4 knowledge of.</p> <p>5 Q Is there anyone at the Indiana Election Division 6 who does have detailed knowledge of WCAG?</p> <p>7 A Not within the Election Division itself, no, to my 8 knowledge.</p> <p>9 Q What about within the SOS? Are you aware of 10 anybody who has detailed knowledge of WCAG there?</p> <p>11 A No, I am not aware of anyone within SOS who does 12 have that detailed knowledge. They are a much 13 larger entity than the Election Division, and so 14 there may very well be an individual there but not 15 someone I'm familiar with.</p> <p>16 Q So before SEA 398 came around, was the IED seeking 17 to be WCAG compliant in any of its operations?</p> <p>18 A I don't recall any discussions with regard to our 19 website and WCAG prior to the period last year 20 after commencement of the litigation. No, I don't 21 have any recollection of that.</p> <p>22 Q So fair to say there's no reason to think that the 23 IED has been trying to comply with WCAG prior to 24 the passage of SEA 398; is that correct?</p> <p>25 A That would be correct, in that I know of no special</p>
<p style="text-align: right;">Page 166</p> <p>1 incorporate documents that don't yet exist as part 2 of positive law, and so as a result we're required 3 on occasion to go back in a subsequent session to 4 say please amend the statute to say version 2.2 5 instead of version 2.1.</p> <p>6 Q And there are different levels of WCAG compliance; 7 is that correct?</p> <p>8 A Yes. I understand there are three levels of 9 ranking, A, AA, and AAA, as I've called them.</p> <p>10 Q I agree. And which version does the statute 11 require the IED and SOS to comply with?</p> <p>12 A In my understanding, it requires compliance with 13 the AAA because that is the full compliance with 14 version 2.1 as it existed when the bill was signed 15 into law and presumably if the General Assembly 16 updates the statute and amends it to read 2.2 that 17 the same AAA level of compliance would be required.</p> <p>18 Q So you mentioned before that one of the things that 19 WCAG requires is screen contrast standards; is that 20 correct?</p> <p>21 A Yes, that's correct.</p> <p>22 Q Is there anything else that WCAG requires of the 23 SOS and IED?</p> <p>24 A I am sure that there is. I don't profess to have 25 detailed knowledge about all the requirements under</p>	<p style="text-align: right;">Page 168</p> <p>1 particular effort to do so.</p> <p>2 Q So fair to say that there's no training that the 3 IED provides to its own staff or to county boards 4 of elections about WCAG?</p> <p>5 A That would be correct.</p> <p>6 Q All right. So we discussed earlier that there are 7 different phases in the UOCAVA voting process. 8 There's a voter registration phase, an absentee 9 ballot application phase that for UOCAVA voters is 10 usually combined into a single step and form --</p> <p>11 A Yes.</p> <p>12 Q -- and then there's the transmission of the ballot 13 and associated documents to the voter and 14 transmission of the completed ballot and associated 15 documents back to the county board of elections. 16 Those are basically the three steps; is that right?</p> <p>17 A Yes, that's correct.</p> <p>18 Q So focusing in on that first phase of voter 19 registration if necessary and the request of a 20 UOCAVA ballot, and in this case an accessible 21 UOCAVA ballot, I assume, what is the 22 Indiana Election Division's plan to make that 23 process accessible and WCAG compliant?</p> <p>24 A The Election Division has not developed a plan of 25 the sort you describe. I think candidly that is</p>

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<p style="text-align: right;">Page 169</p> <p>1 something that, in my opinion, regrettably has been</p> <p>2 impeded by our litigation, but I would say that we</p> <p>3 will certainly be prepared to implement any plan</p> <p>4 that we are required to do in compliance with a</p> <p>5 court order.</p> <p>6 Q What does SEA 398 require the Election Division and</p> <p>7 Secretary of State to do in order to comply with</p> <p>8 SEA 398?</p> <p>9 A Well, I assume you're referring to the provisions</p> <p>10 with regard to the provision of the election</p> <p>11 materials to voters with print disabilities?</p> <p>12 Q Thank you. Yes, that's correct.</p> <p>13 A Okay. Thank you. It requires the Secretary of</p> <p>14 State to issue an order, which I believe was issued</p> <p>15 on September the 27th of this year, that spelled</p> <p>16 out the preliminary aspects of compliance with</p> <p>17 Senate Enrolled Act 398. As a practical matter, to</p> <p>18 the extent that compliance requires alteration of</p> <p>19 programming for the election administration module</p> <p>20 of the Statewide Voter Registration System, the</p> <p>21 development of a combined form that the</p> <p>22 Election Division would approve and issue, those</p> <p>23 are clearly next steps in any plan. But beyond</p> <p>24 that, the Election Division does not have a</p> <p>25 specific plan at this time.</p>	<p style="text-align: right;">Page 171</p> <p>1 So I see that as an ongoing effort in the same</p> <p>2 way that it has been for implementing compliance</p> <p>3 with UOCAVA. It's very similar in that respect.</p> <p>4 Q You mentioned the FVAP form --</p> <p>5 MS. BRANDT-YOUNG: Michele, that's F-V-A-P.</p> <p>6 Q -- as a form that will need to be updated or made</p> <p>7 compliant here. What other forms will the IED or</p> <p>8 SOS have to make compliant in order to comply with</p> <p>9 this law?</p> <p>10 A The ballot secrecy waiver form that you mentioned,</p> <p>11 the one currently designated by our informal system</p> <p>12 as ABS-9, would be one obvious example. That is</p> <p>13 the only other form that immediately comes to mind.</p> <p>14 Q And that was what we looked at before, Exhibit 6?</p> <p>15 A Yes, that's correct.</p> <p>16 Q Okay. What about the bill of rights, the absentee</p> <p>17 voter bill of rights? Will an accessible version</p> <p>18 of that have to be developed?</p> <p>19 A That would be a logical extension, yes. I would</p> <p>20 agree that that would need to have an accessible</p> <p>21 version developed.</p> <p>22 Q Fair to say that the ballots themselves will have</p> <p>23 to be made WCAG compliant?</p> <p>24 A Keeping in mind that the Election Division does not</p> <p>25 print any ballots.</p>
<p style="text-align: right;">Page 170</p> <p>1 Q What are the steps that SEA 398 is going to require</p> <p>2 the Indiana Election Division and Secretary of</p> <p>3 State to complete in order to provide UOCAVA access</p> <p>4 to voters with print disabilities? You've</p> <p>5 mentioned one step, which is to issue a policy.</p> <p>6 You've mentioned another step, which is to come up</p> <p>7 with a form, which I believe you said was the FVAP</p> <p>8 form.</p> <p>9 A A model based on the FPCA form, yes.</p> <p>10 Q And that's the form that we saw in Exhibit 4?</p> <p>11 A That's correct.</p> <p>12 Q What are some other steps that will have to be</p> <p>13 taken in order to comply with the legislature's</p> <p>14 directions?</p> <p>15 A Beyond the ones that you've mentioned, I think</p> <p>16 clearly there will be an educational component with</p> <p>17 regard to training county election officials.</p> <p>18 There will be an effort required to update the</p> <p>19 publications that we issue and publish on our</p> <p>20 website as well as in paper form to reflect those</p> <p>21 requirements. To discuss those with county</p> <p>22 election administrators, voter registration</p> <p>23 officials to address any questions they have that</p> <p>24 arise in the practical implementation of</p> <p>25 Senate Bill 398.</p>	<p style="text-align: right;">Page 172</p> <p>1 Q Yes.</p> <p>2 A Instead all ballots are printed by the county or in</p> <p>3 the case of the federal write-in ballot the</p> <p>4 so-called FWAB, F-W-A-B, which is, again, a product</p> <p>5 of our colleagues at the Federal Voting Assistance</p> <p>6 Program. The ability to have an accessible ballot</p> <p>7 will, of course, depend upon which type of voting</p> <p>8 system is used and some voting systems that are</p> <p>9 used already have assistive technology that would</p> <p>10 permit voters with print disabilities to be able to</p> <p>11 cast a ballot independently and privately.</p> <p>12 And so I don't know that it's a requirement</p> <p>13 generically for all ballots, but depending, again,</p> <p>14 upon the specifics of any court order, then yes,</p> <p>15 there would be a requirement to modify certainly</p> <p>16 optical scan ballots and the traditional paper</p> <p>17 ballots that are still rarely used in smaller</p> <p>18 elections.</p> <p>19 Q My question was actually a simpler question, which</p> <p>20 is: In order for a voter with a print disability</p> <p>21 to participate in the UOCAVA program, any ballot</p> <p>22 that they vote on will have to be compliant with</p> <p>23 WCAG, won't it?</p> <p>24 MS. ABSHIRE: Objection to the extent it calls</p> <p>25 for a legal conclusion.</p>

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<p style="text-align: right;">Page 173</p> <p>1 A I'm not aware of any Indiana statute that requires 2 the ballot used in the UOCAVA program as 3 administered in Indiana to be compliant with the 4 WCAG. And so I can't address that in terms of what 5 might be required under applicable federal law, but 6 certainly under Indiana law there's not a specific 7 requirement to that effect.</p> <p>8 Q Is the purpose of SEA 398 to enable voters with 9 print disabilities to print by e-mail, fax, and 10 paper U.S. postal mail, just as UOCAVA voters may 11 do?</p> <p>12 A I say this with deference to the author, 13 Senator Greg Walker, in terms of the intent, but I 14 think generally speaking that was the understanding 15 of the motivation behind the introduction of 16 Senate Bill 398.</p> <p>17 Q Is it fair to say that the Indiana Election 18 Division contemplates that some voters with print 19 disabilities participating in the program devised 20 by SEA 398 will receive ballots by e-mail and mark 21 them with their own assistive technology and then 22 e-mail them back?</p> <p>23 A Yes, I believe that's correct.</p> <p>24 Q Is it the position of the Indiana Election Division 25 that a ballot provided electronically to a voter</p>	<p style="text-align: right;">Page 175</p> <p>1 for voters with print disabilities envisioned by 2 SEA 398?</p> <p>3 A Yes. I would say the county election boards who 4 will actually carry out the implementation of the 5 program.</p> <p>6 Q What will they have to do?</p> <p>7 A They will have to conduct some of the same sort of 8 training and revision of their own county-specific 9 election publications and material that they use to 10 train poll workers and others involved in the 11 absentee process.</p> <p>12 Q Forgive me. I'm going to repeat myself and ask you 13 to repeat yourself here. At least two forms that 14 we know of that the Indiana Election Division and 15 Secretary of State must come up with are the FVAP 16 form and the ballot secrecy waiver; right?</p> <p>17 A Yes, that is correct. I'm referring, of course, to 18 a model based on the FPCA form, but I think we 19 understand that, yes.</p> <p>20 Q Thank you. I appreciate the clarification. Those 21 model forms, will they have to be accessible to 22 voters with print disabilities?</p> <p>23 A I would think that they would have to be 24 accessible. Again, presuming what any court order 25 might require is a bit premature, but I would</p>
<p style="text-align: right;">Page 174</p> <p>1 with a print disability does not need to be 2 compliant with WCAG or otherwise made accessible in 3 order for that voter to mark an e-mail ballot under 4 SEA 398?</p> <p>5 A The Election Division has taken no position on that 6 question.</p> <p>7 Q So in terms of steps that the Election Division or 8 the Secretary of State must take in order to 9 implement SEA 398 as written, so far we have that 10 they need to issue a policy, which has been issued; 11 they need to come up with an FVAP form; they need 12 to come up with a ballot secrecy waiver form, and 13 that's similar to Exhibit 6 that we've already 14 seen --</p> <p>15 A Yes, I believe that's right.</p> <p>16 Q -- it needs to update its educational materials. 17 And is there anything else that the Secretary of 18 State or the Indiana Election Division believes 19 that they must do in order to implement SEA 398 as 20 it applies to voters with print disabilities?</p> <p>21 A There's nothing further I can think of beyond what 22 we discussed and you've just described.</p> <p>23 Q Is there anything that any entity other than the 24 Indiana Election Division or Secretary of State 25 must do in order to implement the voting program</p>	<p style="text-align: right;">Page 176</p> <p>1 assume the answer is yes.</p> <p>2 Q Do you think that SEA 398 requires it?</p> <p>3 A I think SEA 398 speaks generally with regard to a 4 system that complies with the WCAG version 7.1, and 5 to the extent upon further examination it becomes 6 clear that compliance would include those items 7 then, yes, that would be the logical result.</p> <p>8 Q Sitting here today, which parts of the system do 9 you already feel confident must comply with WCAG?</p> <p>10 MS. ABSHIRE: Objection. It's vague.</p> <p>11 A Yes, I'm having a little trouble formulating an 12 answer to that question. Because I think the 13 presumption is that the components that are 14 specifically referenced in 398 with regard to the 15 method to be used by voters with print 16 disabilities, the e-mail and fax transmissions, the 17 ancillary forms we discussed, clearly fall within 18 that requirement. Beyond that, I would not hazard 19 a guess as to what else might be found to be 20 required under 398.</p> <p>21 Q I'm sorry. Could you repeat that for me?</p> <p>22 A Yes. What I was saying was it's clear from 23 Senate Bill 398's amendment to 3-11-4-6(k) that the 24 system developed must comply with WCAG's 25 requirements. And certainly upon further</p>

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<p style="text-align: right;">Page 177</p> <p>1 examination of what the requirements might be with 2 regard to screens or with regard to forms there 3 might be additional material that's subject to the 4 requirements to implement, but the ones we've 5 identified so far with regard to the transmittal by 6 e-mail and fax in return are the ones that to me 7 appear to be part of the 398 responsibilities. 8 Beyond that, we haven't developed the system to a 9 degree where I can be more specific.</p> <p>10 Q So which documents are involved here that must 11 comply with WCAG?</p> <p>12 A Well, as I've attempted to articulate it, let me 13 spell it out a bit more if I can.</p> <p>14 Q Sure.</p> <p>15 A That is, the definitive language at the end of 16 3-11-4-6, which requires the Secretary of State's 17 order to be issued for voters with print 18 disabilities, refers to the WCAG standards that are 19 incorporated into Indiana statute by 398 as well. 20 And so, again, in my understanding, if a voter with 21 print disabilities is using the model developed for 22 UOCAVA voters, then presumably that will include 23 the material transmitted to the voter, the ballot 24 and the accompanying documentation, and any other 25 information, such as the absentee voter's bill of</p>	<p style="text-align: right;">Page 179</p> <p>1 say we're charting uncharted territory here, 2 so . . .</p> <p>3 Q Yes, you are building the plane as we speak.</p> <p>4 A Yes indeed.</p> <p>5 Q So in terms of the accessible absentee ballot 6 application, has that form already been developed?</p> <p>7 A No. The form is in draft stage at this point in 8 the Election Division. We have begun work but have 9 not finalized it.</p> <p>10 MS. BRANDT-YOUNG: Plaintiffs request all 11 documents related to the development of that form 12 or all documents sufficient to show the current 13 status of that form, including any related 14 metadata. If it needs to be marked confidential or 15 something like that, we can certainly discuss that.</p> <p>16 Q What guidelines or process must be followed to 17 ensure the accessibility of the form?</p> <p>18 A There are not specific guidelines with regard to 19 the Election Division itself to ensure the 20 accessibility of the form. But in order to ensure 21 that we are compliant with Senate Bill 398 or any 22 court order issued relevant to the matter, I would 23 anticipate the Election Division would contract or 24 use our existing contractual resources for their 25 expertise in making that determination that we have</p>
<p style="text-align: right;">Page 178</p> <p>1 rights, that are an ancillary document in that 2 process. So I hope that that clarifies a bit more.</p> <p>3 Q So the documents that must comply with WCAG if 4 they're being e-mailed to a voter, for instance, 5 through the e-mail aspects of UOCAVA are the 6 ballot?</p> <p>7 A Correct.</p> <p>8 Q And the accompanying documents, which are the voter 9 bill of rights, the --</p> <p>10 A Secrecy waiver.</p> <p>11 Q -- the secrecy waiver, and any local instructions; 12 is that right?</p> <p>13 A Yes, the local instructions would be a component of 14 that.</p> <p>15 Q So all of those must be WCAG compliant. And then 16 any other forms that somebody might use in the 17 UOCAVA process electronically, such as the 18 application for --</p> <p>19 A The original FPCA-modeled application, correct.</p> <p>20 Q Which would be an application for an accessible 21 absentee ballot basically?</p> <p>22 A Correct.</p> <p>23 Q All of those need to be covered by WCAG. Thank 24 you. I got it. And I appreciate your patience.</p> <p>25 A Not a problem, no. It's very intricate and as we</p>	<p style="text-align: right;">Page 180</p> <p>1 achieved compliance.</p> <p>2 Q Is there anybody internal to the Indiana Election 3 Division who has that expertise?</p> <p>4 A No, not to my knowledge.</p> <p>5 Q You said that you sometimes contract resources for 6 the expertise. Who would you contract with here?</p> <p>7 A We contract with a couple of entities with regard 8 to our Statewide Voter Registration System, which 9 involved an election management component. The 10 initial contract was with a company which is now 11 designated as Baker Tilly -- it was formerly known 12 as Virchow Krause -- in October of 2003, and then 13 in the summer of 2004 we contracted with a company 14 which was then known as Quest but has since been 15 acquired by a company that uses the d/b/a of Civix, 16 C-i-v-i-x. And so we work with Baker Tilly as our 17 program manager to supervise the work of Civix as 18 our contractor, so both would be involved in that 19 process.</p> <p>20 Q So who's been designated to develop this form so 21 far just now?</p> <p>22 A The responsibility under Indiana law for developing 23 all election forms falls initially on myself and my 24 counterpart as co-director. We are authorized 25 under state forms Indiana Code 3-5-4-8, and we then</p>

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<p style="text-align: right;">Page 181</p> <p>1 submit forms to an entity in state government</p> <p>2 called the forms management office, which has the</p> <p>3 technical expertise with regard to any number of</p> <p>4 issues going well beyond accessibility in terms of</p> <p>5 the design of forms, style, grammar, etc., and then</p> <p>6 must receive their approval before the</p> <p>7 Election Division issues a forms order prescribing</p> <p>8 a form under that statute.</p> <p>9 Q So what accessibility guidelines have they been</p> <p>10 given, if any?</p> <p>11 A When you say they, you're referring to the forms</p> <p>12 management office?</p> <p>13 Q Yes.</p> <p>14 A They have been given none by the Election Division.</p> <p>15 But, again, I assume that because of their field of</p> <p>16 expertise that they very well have been given</p> <p>17 guidance regarding accessibility standards for</p> <p>18 forms that they use as part of their normal</p> <p>19 process. I'm just not privy to that particular</p> <p>20 information.</p> <p>21 Q And what guidelines, if any, have been given to</p> <p>22 Baker Tilly and Civix for development of these</p> <p>23 forms?</p> <p>24 A None in specific because until the initial design</p> <p>25 of the form is agreed upon by the Election Division</p>	<p style="text-align: right;">Page 183</p> <p>1 they have their own external sources that they</p> <p>2 would bring into play.</p> <p>3 Q Are there any written guidelines right now that</p> <p>4 explain what must be done in order to perform</p> <p>5 quality control for the question of disability</p> <p>6 access of these forms?</p> <p>7 A No, not that I'm aware of.</p> <p>8 Q We've been talking about the forms sort of as</p> <p>9 something that could be downloaded and filled out</p> <p>10 on a computer. But, in fact, there's another</p> <p>11 option for the request of an accessible absentee</p> <p>12 ballot stage, which is to do the entire process</p> <p>13 online at indianavoters.com; is that right?</p> <p>14 A That would be correct certainly with regard to the</p> <p>15 current absentee application and voter registration</p> <p>16 application forms, and so presumably that could be</p> <p>17 an option with regard to the forms developed for</p> <p>18 this particular purpose.</p> <p>19 Q What work has occurred already to explore putting</p> <p>20 an application for an accessible absentee ballot</p> <p>21 onto indianavoters.com?</p> <p>22 A Other than identifying the need to do so</p> <p>23 eventually, I don't believe any work has been done</p> <p>24 at this point because of the draft stage of the</p> <p>25 form.</p>
<p style="text-align: right;">Page 182</p> <p>1 they can only operate in the abstract.</p> <p>2 Q So fair to say that the IED and SOS will develop</p> <p>3 the basic form and then it will be farmed out to</p> <p>4 Baker Tilly and/or Civix to make sure that the form</p> <p>5 is accessible. Do I have that right?</p> <p>6 A Yes, that's correct.</p> <p>7 Q But the form is still in the draft stage; is that</p> <p>8 right?</p> <p>9 A That's correct.</p> <p>10 Q Once Baker Tilly and Civix have completed their</p> <p>11 work on the form, what quality control processes</p> <p>12 are in place either with them or with the IED or</p> <p>13 SOS to make sure that the work has been done</p> <p>14 accurately from an accessibility perspective?</p> <p>15 A That is a question that I cannot provide a concrete</p> <p>16 answer to but I can anticipate what is likely or</p> <p>17 possible to occur. That is, because of the</p> <p>18 specialized nature of the requirements for these</p> <p>19 forms, the Election Division or Secretary of State</p> <p>20 might very well retain additional resources to</p> <p>21 determine that the forms have been developed in</p> <p>22 compliance with the applicable standards.</p> <p>23 I should add that Baker Tilly, for example, is</p> <p>24 a very large company that has been very helpful in</p> <p>25 providing us specialists on particular projects and</p>	<p style="text-align: right;">Page 184</p> <p>1 Q When the time comes, what will that process look</p> <p>2 like?</p> <p>3 A The process for?</p> <p>4 Q Thank you. That was not a clear question.</p> <p>5 Withdrawn.</p> <p>6 When the State has finalized the accessible</p> <p>7 absentee ballot application form, what is the</p> <p>8 process for incorporating such a form into an all</p> <p>9 online submission format in indianavoters.com?</p> <p>10 A The process involves review and approval by the</p> <p>11 Election Division and the Secretary of State. And</p> <p>12 to the extent, as I've indicated, that there's</p> <p>13 technical advice required with regard to</p> <p>14 implementation, that would be made beforehand.</p> <p>15 When the forms are finalized, there will need to be</p> <p>16 a determination with regard to the timing of the</p> <p>17 rollout of the forms and budgeting with regard to</p> <p>18 allocating funds to pay for costs associated with</p> <p>19 that effort. And that I believe is all that would</p> <p>20 occur prior to the deployment of the forms.</p> <p>21 Q Noting that it's December of 2021 right now and</p> <p>22 that the next major primary election in Indiana is</p> <p>23 going to take place in May of 2022, do you think</p> <p>24 that an all online application will go live at</p> <p>25 indianavoters.com in time for voters to request an</p>

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<p style="text-align: right;">Page 185</p> <p>1 accessible absentee ballot for that May of 2022</p> <p>2 election?</p> <p>3 A The answer is yes, I do. It may not go online at</p> <p>4 the beginning of the request for absentee ballot</p> <p>5 applications because that date has actually passed.</p> <p>6 That was December the 1st. Now, there's for</p> <p>7 understandable reasons very little interest at this</p> <p>8 point from most voters in requesting absentee</p> <p>9 ballots for the May primary, but I would assume</p> <p>10 that, yes, it can be implemented in time well</p> <p>11 before the deadlines for absentee ballot</p> <p>12 applications to be received.</p> <p>13 I should say we have a regularly-scheduled</p> <p>14 build, as they are called, in March of this year.</p> <p>15 And, again, assuming finalization of forms and</p> <p>16 other preparatory work, I could anticipate it being</p> <p>17 made available the first part of March, which would</p> <p>18 be a full two months before the primary election</p> <p>19 the first Tuesday after the first Monday in May.</p> <p>20 Q All right. So and I apologize that I told you</p> <p>21 there would be repetition and there is. Here it</p> <p>22 is. So the four types of documents that go into</p> <p>23 casting an absentee ballot are, one more time,</p> <p>24 after the application is done and been accepted,</p> <p>25 there's the bill of rights, the secrecy waiver, the</p>	<p style="text-align: right;">Page 187</p> <p>1 And so I may have lost the thread of your</p> <p>2 question, but just to say we would be preparing to</p> <p>3 give that guidance to counties once we were sure</p> <p>4 about the details of what exactly we needed to</p> <p>5 provide them.</p> <p>6 Q What are the details that you feel like you don't</p> <p>7 know yet?</p> <p>8 A I don't know, for example, how many counties choose</p> <p>9 the option of having additional instructions and if</p> <p>10 they do choose that option what variations may</p> <p>11 exist between one county and another, and so would</p> <p>12 require, I'm sure, us to share information with the</p> <p>13 counties and for them to share information with us</p> <p>14 so that we could assist with developing</p> <p>15 supplemental instructions, as I'll call them,</p> <p>16 templates for counties, again, based on their</p> <p>17 particular voting system and other considerations</p> <p>18 they have in the instructions they use currently.</p> <p>19 Q When will those guidelines be issued to the</p> <p>20 counties?</p> <p>21 A I do not know from the Election Division's</p> <p>22 perspective. Again, it depends upon when the</p> <p>23 particular issues involved in litigation are</p> <p>24 finalized and any court directive becomes clear. I</p> <p>25 think we are naturally reluctant to provide</p>
<p style="text-align: right;">Page 186</p> <p>1 ballot itself, and any optional county-specific</p> <p>2 instructions. And we've established that all of</p> <p>3 those are going to need to be made compliant with</p> <p>4 WCAG in order for a voter with a print disability</p> <p>5 to cast their ballot by e-mail; is that right?</p> <p>6 MS. ABSHIRE: Objection. Compound.</p> <p>7 A Yes, that's my understanding. Recognizing, of</p> <p>8 course, that each county will develop different</p> <p>9 forms that are suited for its particular type of</p> <p>10 voting system and circumstances, but yes, I think</p> <p>11 that's correct.</p> <p>12 Q Some of those documents are developed by the State,</p> <p>13 as we've already said, namely, the bill of rights</p> <p>14 and the secrecy waiver. As to the ballot and</p> <p>15 county-specific instructions that have to be</p> <p>16 developed by the counties, what guidelines are</p> <p>17 being given to them to make sure that those</p> <p>18 documents are WCAG compliant?</p> <p>19 A At this point guidelines have not been given to the</p> <p>20 counties, in part because of our place in the</p> <p>21 election cycle. There were no regularly-scheduled</p> <p>22 elections in 2021 in Indiana, and so we just</p> <p>23 completed our annual conference to prepare counties</p> <p>24 for the 2022 elections and provided them with other</p> <p>25 types of revised forms and publications.</p>	<p style="text-align: right;">Page 188</p> <p>1 information to counties that we may then have to</p> <p>2 either rescind or revise because that has the</p> <p>3 potential to create confusion for county election</p> <p>4 administrators, and so I would assume that we'd be</p> <p>5 conveying that, again, when the requirements of</p> <p>6 implementation take final form.</p> <p>7 Q So far as you know, as to ballots and additional</p> <p>8 instructions, are any counties already providing</p> <p>9 those in alternate formats like large print or</p> <p>10 braille?</p> <p>11 A No, I am not aware of any county that is doing so.</p> <p>12 Q Do you anticipate including instructions to the</p> <p>13 counties on whether and if so how to provide those</p> <p>14 documents in large print or braille?</p> <p>15 A I would anticipate doing that as part of the</p> <p>16 process of implementing any court order that might</p> <p>17 come out of this litigation, for example, or any</p> <p>18 changes that are made by the General Assembly</p> <p>19 during its session that I referenced earlier.</p> <p>20 Q If this litigation is not resolved before May 2022,</p> <p>21 will the Indiana Election Division refrain from</p> <p>22 issuing guidance to the counties about the</p> <p>23 accessible formats for ballots and additional</p> <p>24 instructions until after the court litigation has</p> <p>25 resolved?</p>

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<p style="text-align: right;">Page 189</p> <p>1 MS. ABSHIRE: Objection to the extent it calls</p> <p>2 for attorney work product.</p> <p>3 A I would say that the other factor that influences</p> <p>4 the answer to that question is what changes, if</p> <p>5 any, are made by the Indiana General Assembly. The</p> <p>6 Indiana General Assembly has certainly shown a</p> <p>7 willingness to address the issue and to prescribe</p> <p>8 particular requirements for the Election Division</p> <p>9 and others to carry out, and so even if the</p> <p>10 litigation is not resolved, we may be required by</p> <p>11 legislative action to convey the sort of</p> <p>12 information involved in your question.</p> <p>13 Q Is it fair to say that each county board will have</p> <p>14 to develop their own accessible ballots and</p> <p>15 additional instructions?</p> <p>16 A It would be fair to say that each county election</p> <p>17 board may be required to develop its own ballots,</p> <p>18 although many counties use the same vendor to</p> <p>19 produce ballots and so it may not be unique in all</p> <p>20 92 cases. And I would add that the additional</p> <p>21 instructions are optional, and so there may very</p> <p>22 well be counties who don't see a need to provide</p> <p>23 additional instructions.</p> <p>24 Q You said before that many counties use the same</p> <p>25 vendor to produce ballots; is that right?</p>	<p style="text-align: right;">Page 191</p> <p>1 There are, I am sure, a handful of counties</p> <p>2 who feel competent to produce the ballots in-house</p> <p>3 using software not supplied by their vendor, but I</p> <p>4 think generally at this point the ballots are mass</p> <p>5 produced by the county's vendor.</p> <p>6 Q Are you aware that any of those entities have any</p> <p>7 particular expertise in making documents accessible</p> <p>8 for use by voters with print disabilities?</p> <p>9 A I'm not directly aware of any expertise, but I</p> <p>10 would infer that some of the larger vendors, such</p> <p>11 as Election Systems & Software, that have customers</p> <p>12 in multiple states and jurisdictions are more</p> <p>13 likely to have that sort of expertise than others</p> <p>14 whose coverage is more limited, such as a Microvote</p> <p>15 which only services counties in three states.</p> <p>16 Q Are you specifically aware of any accessibility</p> <p>17 expertise that any of the vendors you've mentioned</p> <p>18 has?</p> <p>19 A No, nothing specific.</p> <p>20 Q Are you specifically aware of any county board of</p> <p>21 elections having particular expertise in making</p> <p>22 documents accessible to voters with print</p> <p>23 disabilities?</p> <p>24 A No, not that I can think of or recall.</p> <p>25 Q And the Secretary of State and Election Division</p>
<p style="text-align: right;">Page 190</p> <p>1 A That's correct.</p> <p>2 Q Who's the vendor?</p> <p>3 A There are many vendors. I can mention some more</p> <p>4 common ones. Election Systems & Software provides</p> <p>5 optical scan ballots for many of their counties.</p> <p>6 Likewise, Microvote Corporation provides absentee</p> <p>7 ballots that are used in conjunction with their</p> <p>8 direct record electronic voting systems. The other</p> <p>9 vendors in Indiana are Hart InterCivic and</p> <p>10 Unisyn Voting Systems, and they have fewer county</p> <p>11 customers so I'm less familiar with what ballot</p> <p>12 services they may provide but they would be in a</p> <p>13 position to do that.</p> <p>14 Q So how does a county board of elections typically</p> <p>15 interact with these vendors in order to produce</p> <p>16 ballots that are e-mailed out to UOCAVA voters?</p> <p>17 A The vendor typically sends ballot proofs to the</p> <p>18 counties for use for all purposes, whether that's</p> <p>19 in-person voting on election day or absentee</p> <p>20 ballots to be mailed out. And then, in my</p> <p>21 understanding, once the proof was approved, of</p> <p>22 course, and the ballot became finalized, then the</p> <p>23 county would provide a faxed copy or e-mail</p> <p>24 attachment a copy of the ballot developed by the</p> <p>25 vendor in that case.</p>	<p style="text-align: right;">Page 192</p> <p>1 don't have that expertise in-house either; correct?</p> <p>2 A Yes, that's correct. Again, with the proviso that</p> <p>3 my knowledge of the Secretary of State's office is</p> <p>4 more limited.</p> <p>5 Q When the IED wants to make a document accessible,</p> <p>6 they send it out to Baker Tilly or to Civix; is</p> <p>7 that right?</p> <p>8 A Assuming it involves the election management module</p> <p>9 or voter registration module of the statewide</p> <p>10 system, that would be correct. Baker Tilly would</p> <p>11 be involved in the implementation of the product by</p> <p>12 Civix, and so, therefore, they would be the</p> <p>13 recipient of communication.</p> <p>14 Q So forgive me if I'm asking you to repeat yourself.</p> <p>15 But in terms of making ballots and additional</p> <p>16 county-specific instructions accessible to send out</p> <p>17 in UOCAVA voter e-mails, the IED will have to issue</p> <p>18 guidelines in order to help them do that; is that</p> <p>19 right?</p> <p>20 A I don't know that that's entirely correct. It may</p> <p>21 be more of a matter of what form this takes.</p> <p>22 Guidelines in my mind imply prescribed sequential</p> <p>23 standards, whereas in contrast the</p> <p>24 Election Division when it conducts ballot review is</p> <p>25 not doing anything more than, I suppose, applying</p>

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<p style="text-align: right;">Page 193</p> <p>1 the statutory standards, which are more than</p> <p>2 guidelines, and responding back to the county with</p> <p>3 any questions or indications of problems with the</p> <p>4 ballot format.</p> <p>5 Q Is it fair to say that the Election Division will</p> <p>6 have to provide some sort of instruction or</p> <p>7 assistance to the counties explaining their duty to</p> <p>8 make these documents accessible and suggesting ways</p> <p>9 to make that happen?</p> <p>10 A Yes, I think that's fair. That's correct.</p> <p>11 Q What is the current status of the development of</p> <p>12 those instructions?</p> <p>13 A Those instructions have not been developed, begun.</p> <p>14 The form itself has taken the available time and</p> <p>15 been given the priority.</p> <p>16 Q How long do you anticipate it will take to develop</p> <p>17 those instructions?</p> <p>18 A I would not anticipate any lengthy time.</p> <p>19 Understanding that the Election Division internally</p> <p>20 has to communicate amongst ourselves and agree upon</p> <p>21 a version of the communication involved here, but I</p> <p>22 don't see that as being an unduly lengthy process.</p> <p>23 Q Does the Election Division anticipate getting</p> <p>24 outside help to develop that assistance for the</p> <p>25 county boards?</p>	<p style="text-align: right;">Page 195</p> <p>1 process.</p> <p>2 Q All right. So let's turn from the documents sent</p> <p>3 to the voter to the filling out process by the</p> <p>4 voter, and for that let's mark another document.</p> <p>5 MS. BRANDT-YOUNG: Let the record reflect that</p> <p>6 we're marking a document called ACBI832-844</p> <p>7 Absentee Voting Procedures for Voters with Print</p> <p>8 Disabilities as Exhibit 7. I'll share my screen in</p> <p>9 just a moment.</p> <p>10 Q Sir, can you see a document that starts with</p> <p>11 Secretary of State, State of Indiana there?</p> <p>12 A Yes, I can.</p> <p>13 Q Great. Again, if your counsel would like to open</p> <p>14 that document on a separate laptop so that you can</p> <p>15 scroll through it and take a look at it, as long as</p> <p>16 that's the only document visible on the laptop,</p> <p>17 that's fine with me. Not saying you have to</p> <p>18 though.</p> <p>19 A Okay. I think we've got it implemented maybe.</p> <p>20 THE WITNESS: No?</p> <p>21 MS. ABSHIRE: Two-finger scroll.</p> <p>22 A Okay, yes, now I think we've mastered the scrolling</p> <p>23 technique here.</p> <p>24 Q Excellent. Very good. So if you could just take a</p> <p>25 look at this first page here. Do you recognize</p>
<p style="text-align: right;">Page 194</p> <p>1 A I don't think the Election Division has made a</p> <p>2 decision with regard to whether that would be</p> <p>3 necessary. Your question uses the term outside. I</p> <p>4 take that to mean entities other than Baker Tilly</p> <p>5 or Civix, and I would say we are more likely to use</p> <p>6 what resources are available with our current</p> <p>7 contractors than to enter into new contractual</p> <p>8 relationships.</p> <p>9 Q Thank you. I think that's a good point. I was</p> <p>10 envisioning Baker Tilly and Civix is being outside</p> <p>11 the government because they're contractors and the</p> <p>12 State doesn't have this expertise itself. So do</p> <p>13 you anticipate using Baker Tilly and Civix to</p> <p>14 develop that guidance for the counties?</p> <p>15 A I would anticipate them being involved in that,</p> <p>16 yes.</p> <p>17 Q What quality control processes around document</p> <p>18 accessibility do you anticipate that the IED will</p> <p>19 require of the counties?</p> <p>20 A I'm not sure whether it's not premature at this</p> <p>21 point for me to speculate as to what that might be.</p> <p>22 Again, it's going to require the Election Division</p> <p>23 to set its own standards with regard to the</p> <p>24 implementation of the requirements of 398 and then</p> <p>25 turn its attention to the county role in the</p>	<p style="text-align: right;">Page 196</p> <p>1 this document?</p> <p>2 A Yes, I do.</p> <p>3 Q What is it?</p> <p>4 A It was the order that I referenced earlier that was</p> <p>5 issued by the Secretary of State, Holli Sullivan,</p> <p>6 on September 27 of this year.</p> <p>7 Q So fair to say this is the formal policy issued so</p> <p>8 far by the Indiana Election Division and</p> <p>9 Secretary of State on how to correctly implement</p> <p>10 the provisions of SEA 398 that apply to voters with</p> <p>11 print disabilities?</p> <p>12 A Yes, that's correct. Issued by the Secretary of</p> <p>13 State with the approval of the Election Division.</p> <p>14 Q Is this a final policy?</p> <p>15 A I would have no way to know what the Secretary's</p> <p>16 plans might be to amend or otherwise act with</p> <p>17 regard to the statutory directive for an order.</p> <p>18 Q Fair to say this policy is in effect right now?</p> <p>19 A Yes, that's correct.</p> <p>20 Q It could be amended at a later time?</p> <p>21 A I believe the statute does not preclude amendments.</p> <p>22 Q And we've already discussed that there will be</p> <p>23 additional guidance to the county boards that will</p> <p>24 come out about compliance with SEA 398 in addition</p> <p>25 to this policy; is that right?</p>

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<p style="text-align: right;">Page 197</p> <p>1 A That's correct.</p> <p>2 Q Has this policy been incorporated already into</p> <p>3 other guidance issued by the Indiana Election</p> <p>4 Division or Secretary of State? In particular, I'm</p> <p>5 thinking of the 2022 Voter Registration Guidebook,</p> <p>6 the 2022 Election Administrator's Manual. Is this</p> <p>7 policy incorporated in those?</p> <p>8 A I don't recall that it is incorporated in the</p> <p>9 Voter Registration Guidebook or the</p> <p>10 Election Administrator's Manual. I'm recalling we</p> <p>11 did have a last-minute insertion into the</p> <p>12 Voter Registration Guidebook just as we were going</p> <p>13 to print before our conference this past week, but</p> <p>14 I don't believe it was this document.</p> <p>15 Q Has this policy been implemented in any other</p> <p>16 guidance to counties or to anyone as far as you</p> <p>17 know at this time?</p> <p>18 A It has certainly been distributed and made</p> <p>19 available -- sorry, we're having scrolling issues</p> <p>20 here -- made available and I believe it is,</p> <p>21 although I don't say this having checked it myself,</p> <p>22 I believe it's accessible on the web, but, no, not</p> <p>23 in any method beyond that that I recall.</p> <p>24 Q All right. So I'd like you to jump down to</p> <p>25 page 11, please.</p>	<p style="text-align: right;">Page 199</p> <p>1 identified have not been listed in this particular</p> <p>2 version of the order. I do not recall any</p> <p>3 discussion when the Election Division reviewed the</p> <p>4 order raising the question of their being included.</p> <p>5 I would say in part with regard to</p> <p>6 instructions that, again, those are optional and</p> <p>7 not necessarily produced in every county. With</p> <p>8 regard to ballots themselves, that may be a</p> <p>9 question of terminology because we generally do not</p> <p>10 consider a ballot to be a form. For example, the</p> <p>11 ability of the Election Division to approve a form</p> <p>12 does not include approving a ballot because, again,</p> <p>13 they're not issued by the State. So that's my</p> <p>14 working assumption in terms of why 1.9 covers what</p> <p>15 it does.</p> <p>16 Q So fair to say that the reason that ballots aren't</p> <p>17 listed here could be because a ballot is not a</p> <p>18 form, a form is consistent and a ballot changes a</p> <p>19 lot?</p> <p>20 A Correct.</p> <p>21 Q Or it could be because it's not a document</p> <p>22 developed by the IED or SOS?</p> <p>23 A Correct.</p> <p>24 Q But it's not because it's the position of anyone</p> <p>25 that ballots don't need to be accessible in order</p>
<p style="text-align: right;">Page 198</p> <p>1 A I believe I'm on page 11.</p> <p>2 Q Great. I have scrolled down to --</p> <p>3 A No, sorry, I'm not, not quite. Now I'm on page 11.</p> <p>4 Q Great. Let's scroll down to the bottom of the page</p> <p>5 where it says 1.9 New Form Impacts.</p> <p>6 A Sorry. Our pagination may not be lined up here.</p> <p>7 Q Oh, I apologize, sir. I meant .pdf page 11. The</p> <p>8 document page that appears at the bottom of the</p> <p>9 page is Page 10 of 12 instead of 11 of 12 because</p> <p>10 of the cover page that was on it. When I say</p> <p>11 page 11, I mean .pdf page 11.</p> <p>12 A Okay. I believe we found 1.9 New Form Impacts.</p> <p>13 Q Lovely. Thank you.</p> <p>14 A Uh-huh.</p> <p>15 Q It says here that the new form impacts are the</p> <p>16 Voter Registration and Absentee Ballot Request for</p> <p>17 Voters with Print Disabilities and the</p> <p>18 Ballot Secrecy Waiver for faxed and emailed</p> <p>19 ballots. Do you see that?</p> <p>20 A I do.</p> <p>21 Q The county-specific instructions and the ballots</p> <p>22 themselves are not listed here. Do you agree?</p> <p>23 A I do not see them. I would agree.</p> <p>24 Q Why are those new forms not listed here?</p> <p>25 A I would not know why the particular forms</p>	<p style="text-align: right;">Page 200</p> <p>1 to include them in the UOCAVA voting process for</p> <p>2 voters with print disabilities? Do I understand</p> <p>3 that right?</p> <p>4 A That's my understanding, yes.</p> <p>5 Q Great. Looking just below Section 1.9 in this</p> <p>6 policy to Section 1.10. This is on</p> <p>7 Web Accessibility Testing Impacts. Do you see</p> <p>8 that?</p> <p>9 A I do.</p> <p>10 Q So the following things it lists to be tested for</p> <p>11 WCAG 2.1 compliance are the Indiana Voter Portal at</p> <p>12 IndianaVoters.com; the Combined form used by voters</p> <p>13 with print disabilities, which is the FVAP form,</p> <p>14 Exhibit 4, or the new version to be developed</p> <p>15 thereof --</p> <p>16 A Correct, yes.</p> <p>17 Q -- the Ballot Secrecy Waiver, which will be the new</p> <p>18 version to be developed of Exhibit 6; and the</p> <p>19 County Contact Form. Do you see that there?</p> <p>20 A I do.</p> <p>21 Q What is the County Contact Form?</p> <p>22 A The County Contact Form, in my understanding, is an</p> <p>23 informal term not referring to an officially issued</p> <p>24 or prescribed State form. The back of our paper</p> <p>25 absentee and voter registration applications will</p>

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<p style="text-align: right;">Page 201</p> <p>1 typically contain county office contact 2 information, address, telephone numbers, etc., and 3 so that's what I believe it's referring to. 4 Q That makes sense. So contact information for 5 county boards of elections? 6 A Correct. 7 Q Where people might need to send, for instance, the 8 combined form used by voters with print 9 disabilities? 10 A Exactly. 11 Q You have to pick which county you're going to send 12 it to and there are 92 of them and you have to get 13 it right. 14 A Must get it right. 15 Q All right. Sounds good. So some things that I 16 don't see listed here are the bill of rights. It's 17 not listed here. 18 A No, I do not see it either. 19 Q The ballots aren't listed here. 20 A That's correct. Well, I'm having a little trouble 21 scrolling, but I think you're correct. 22 Q And the county-specific instructions aren't listed 23 here; is that right? 24 A That's correct, they're not listed here. 25 Q Is that because it's the position of the SOS and</p>	<p style="text-align: right;">Page 203</p> <p>1 visual disabilities and various adaptive 2 technology. Testing may include assistive 3 technologies, such as voice-to-text and screen 4 reader devices, across multiple browsers and mobile 5 operating systems. 6 A Yes, I see that. 7 Q What are the options that the State is currently 8 exploring for using a company to assist with 9 testing? Is that what we already discussed about 10 Baker Tilly and Civix? 11 A That might include Baker Tilly and Civix, but I 12 think it's a bit of a broader answer. 13 Bosma Enterprises is a large non-profit entity 14 located in Indianapolis that's been playing a very 15 prominent role for decades with regard to offering 16 training for voters with vision disabilities to 17 assist them in developing skills for employment and 18 acting in daily life and in the past has been very 19 well respected in the community for its efforts, 20 and so I think that should be understood to include 21 Bosma Enterprises as well. 22 Q Are there any other companies who assist with this 23 that are being contemplated at the current time? 24 A Not by the Election Division that I'm aware of. 25 Q When will those contracts or relationships be</p>
<p style="text-align: right;">Page 202</p> <p>1 IED that those forms don't need to be tested for 2 WCAG compliance by someone? 3 A No, that is not the position of the 4 Election Division. That is not a position we've 5 taken. 6 Q Will that policy be clarified? 7 A Ultimately that decision lies with the Secretary of 8 State and I'm speaking on behalf of the 9 Election Division at this time. My expectation 10 would be that, yes, any work in this particular 11 area is a work in progress and so, again, based on 12 court orders, based on legislative changes, based 13 on good questions the counties pose regarding 14 practical implementation, there may very well be 15 amendments to the original order that was issued. 16 Q But as of today, the written policy doesn't reflect 17 that those three documents need to be tested for 18 WCAG compliance? 19 MS. ABSHIRE: Objection. Asked and answered. 20 A That's correct. I don't see them indicated here in 21 the particular section we've been examining. 22 Q There's a sentence here that says, The State is 23 currently exploring the options for using a company 24 to assist with testing our assets against the WCAG, 25 which would include utilizing individuals with</p>	<p style="text-align: right;">Page 204</p> <p>1 solidified? 2 A That's difficult to answer with any specificity. I 3 think it will, again, depend upon our ability to 4 make progress with the tasks we've already 5 undertaken and then being able to proceed through a 6 contractual process which may involve procurement 7 issues that come into play with regard to any State 8 contract. So it's difficult for me to be precise 9 but to say I would envision a period of months. 10 And, again, driving to have our program implemented 11 for the May '22 primary is going to be the 12 loadstone that determines our schedule. 13 Q How many different ballot styles do you anticipate 14 will be used in the state of Indiana for the 15 May 2022 primary election? 16 A That is a question that is impossible to answer 17 precisely, but I can give you the factors that go 18 into a calculation. As we've already noted, there 19 are two major political parties conducting separate 20 primaries, which in Indiana are printed on separate 21 ballots. In addition, there are county options 22 that can reduce the number of ballot styles so 23 that, for example, if there is no contest a 24 precinct committeeman or for state convention 25 delegates those candidates can be omitted by the</p>

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<p style="text-align: right;">Page 205</p> <p>1 county election board from the primary ballot and 2 that reduces the number of ballot styles. 3 So we don't know, again, till filing starts 4 for the May 2022 primary and until it ends how many 5 counties may have the option to reduce their ballot 6 styles. We have approximately -- and this is 7 subject to change as we speak -- about 4,500 8 precincts in Indiana, some of which have more than 9 one ballot style within the same precinct. 10 And so to attempt to reach a solution to that 11 equation, if I assumed both major parties had a 12 contested primary in all counties of the state, 13 which may not be true but I'll assume it, then we 14 have basically 200 ballot styles at a minimum. 15 Plus any special elections which have not yet been 16 called for school referenda typically. We 17 typically have around 12 of those in a primary 18 election statewide in a general election year. And 19 then multiply that out by the differences between 20 precincts that are partly within the boundaries of 21 a town corporation. So my rough, admittedly, very 22 coarse estimate is somewhere in the neighborhood of 23 2,500 to 3,000 ballot styles for a May primary in 24 2022. 25 Q Do you think that the combined capacity of</p>	<p style="text-align: right;">Page 207</p> <p>1 Secretary of State or the Indiana Election 2 Division? 3 A It is with both entities. All three entities sign 4 off on the contract. 5 Q All right. So I'd love to talk now about the 6 secrecy waiver as it relates to SEA 398, and so for 7 that let's go to .pdf page 8 in the current exhibit 8 which is Exhibit 7. 9 A I believe we're there. 10 Q I am looking for the text. 11 (Attorney reviewing document on screen) 12 Q All right. So I've highlighted a provision here 13 and we can talk about each sentence or provision 14 individually. First there's a sentence that says, 15 A voter with print disabilities must be able to 16 personally mark their own ballot, which would 17 include the voter's use of adaptive technology to 18 complete their ballot. 19 Do you see that text? 20 A I do. 21 Q And that's enabled by providing them with a ballot 22 in an accessible format that they can fill out with 23 a screen reader or magnifier or speaking software, 24 that sort of stuff? 25 A That's my understanding.</p>
<p style="text-align: right;">Page 206</p> <p>1 Baker Tilly, Civix, and Bosma is adequate to test 2 the accessibility of 2,500 ballots before the 3 May 2022 election? 4 A I have no reason to think it's impossible. I have 5 not consulted on this particular question with the 6 entities we're speaking of and so I don't have any 7 direct knowledge. Is it a challenge? Yes, 8 certainly it is. But it's a challenge that each 9 county undertakes in the preparation of its own 10 ballot styles every time it conducts an election. 11 So it can be done. It becomes a question of 12 whether we have to use just the resources I've 13 identified or have to supplement those with others. 14 Q Today are you aware of what those other resources 15 would be? 16 A I know that there are other for-profit vendors who 17 perform these services. I know that there are 18 other State entities, such as the 19 Governor's Council for People with Disabilities, 20 that may have information regarding potential 21 resources that are not immediately available to the 22 Election Division. So yes, I'm aware that there 23 are some supplemental resources out there that 24 could be utilized. 25 Q Here is a question: Is Baker Tilly's contract with</p>	<p style="text-align: right;">Page 208</p> <p>1 Q Great. We agree, and so that's a great provision. 2 The next sentence says, The voter must be able to 3 affix their signature or mark to the ballot secrecy 4 waiver. 5 A Yes, I see that. 6 Q The voter's signature can be affixed to the secrecy 7 waiver using traditional methods like an indelible 8 ink or pencil, or by using a computer mouse or 9 finger on a touch sensitive device. 10 Do you see that? 11 A I do. 12 Q What does indelible ink mean here? 13 A Indelible ink is language taken from the statute 14 with regard to voter registration and absentee 15 ballot forms that is certainly decades old. It's 16 not a new provision. It in my mind means ink that 17 once applied is difficult if not impossible to 18 remove. 19 Q And the idea there is signing by hand with a pen; 20 is that right? 21 A Correct. 22 Q Is it the defendants' position that ink or pencil 23 complies with WCAG? 24 A Speaking for the Election Division, I note that the 25 remainder of the sentence states or a computer</p>

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<p style="text-align: right;">Page 209</p> <p>1 mouse or finger on a touch sensitive device, and so</p> <p>2 I would believe that indelible ink using a pen</p> <p>3 would not comply with WCAG as I understand it but</p> <p>4 the alternative method that's provided there would.</p> <p>5 Q So just so I understand, it's Defendants' position</p> <p>6 that the computer mouse or finger on a touch</p> <p>7 sensitive device would comply with WCAG; is that</p> <p>8 right?</p> <p>9 A That is my understanding.</p> <p>10 Q What equipment is contemplated here, other than a</p> <p>11 computer mouse which I think we're all familiar</p> <p>12 with?</p> <p>13 A I do not know what additional alternative equipment</p> <p>14 would be available. Clearly there is software that</p> <p>15 can be used that permits a signature to be affixed</p> <p>16 in the same way that one does at a store when</p> <p>17 making a purchase and signing a pad that registers</p> <p>18 at least a reasonable facsimile of your signature.</p> <p>19 So there are items of that sort that I'm familiar.</p> <p>20 There may be others that I'm not familiar with.</p> <p>21 Q Is what's envisioned here that it's supposed to</p> <p>22 produce a reasonable facsimile of handwriting? Is</p> <p>23 that the goal?</p> <p>24 A That is the hopeful expectation. But the absentee</p> <p>25 law specifically provides that when a county</p>	<p style="text-align: right;">Page 211</p> <p>1 A This is based on an Indiana statute, in</p> <p>2 Indiana Code 3-5-4, as I recollect, which</p> <p>3 specifically prohibits the use of electronic</p> <p>4 signatures in a variety of contexts. The</p> <p>5 particular context I recall is with regard for</p> <p>6 petitions to place candidates on the ballot, and I</p> <p>7 think the concern expressed was the potential for</p> <p>8 fraudulent signatures to be affixed using</p> <p>9 electronic means.</p> <p>10 Which I'm sorry to say actually occurred in</p> <p>11 Indiana where a former member of our</p> <p>12 Indiana Election Commission was convicted and sent</p> <p>13 to prison for a couple of years for falsifying</p> <p>14 presidential primary petition forms by using</p> <p>15 photocopies of signatures made on other petitions.</p> <p>16 And so that I think is the motivation for the</p> <p>17 particular statute that's referenced here in the</p> <p>18 order with regard to not affixing electronic copies</p> <p>19 of signatures.</p> <p>20 Q The next sentence says, The only exception is a</p> <p>21 voter using the online portal at IndianaVoters.com</p> <p>22 to submit a voter registration form, absentee</p> <p>23 application, or combined form. In these instances,</p> <p>24 the voter's signature on record with the Indiana</p> <p>25 Bureau of Motor Vehicles is affixed.</p>
<p style="text-align: right;">Page 210</p> <p>1 election board receives an absentee application in</p> <p>2 particular that the county election board can take</p> <p>3 into account that a voter with disabilities may</p> <p>4 have a signature that differs from a signature on</p> <p>5 file that was executed before the voter had the</p> <p>6 disability or may have been altered as a result of</p> <p>7 age, and so, again, it's provided the county</p> <p>8 election boards the discretion to say it need not</p> <p>9 be a perfect exact duplicate of a signature we have</p> <p>10 on file executed using a different mode and a</p> <p>11 different time but so long as the county election</p> <p>12 board is satisfied that it is the signature of the</p> <p>13 voter the applicable forms can be processed.</p> <p>14 As you'll note, Senate Bill 398 also contains</p> <p>15 provisions for dealing with cases where there are</p> <p>16 apparent signature mismatches on absentee</p> <p>17 applications and other documents, and so that I</p> <p>18 think is the context in which to read the sentence.</p> <p>19 Q So the next sentence after that says, It is not</p> <p>20 permissible to affix an electronic copy of a</p> <p>21 signature to voter registration forms, absentee</p> <p>22 applications, or combined forms.</p> <p>23 Do you see that?</p> <p>24 A I do.</p> <p>25 Q What's the purpose of that rule?</p>	<p style="text-align: right;">Page 212</p> <p>1 Why is this exception made?</p> <p>2 A This exception is made because the electronic</p> <p>3 signature was made in the context of the</p> <p>4 individual's previous transaction with the State</p> <p>5 through the Bureau of Motor Vehicles in applying</p> <p>6 for a license or other transaction at the Bureau of</p> <p>7 Motor Vehicles. The signature is subject to the</p> <p>8 safeguards in the Bureau of Motor Vehicles</p> <p>9 database, which is linked to the Statewide Voter</p> <p>10 Registration System as required by the</p> <p>11 National Voter Registration Act, and so I think</p> <p>12 because of those factors that would be the</p> <p>13 rationale for the exception.</p> <p>14 Q That exception doesn't apply to the secrecy waiver;</p> <p>15 right?</p> <p>16 A It does not expressly exempt the secrecy waiver in</p> <p>17 the text that's in the order here. In my view that</p> <p>18 is part of the absentee application that's required</p> <p>19 for the UOCAVA process. So the answer is no, I</p> <p>20 don't understand that as providing an exception for</p> <p>21 the secrecy waiver.</p> <p>22 Q What authentication methods, if any, allow you to</p> <p>23 know with sufficient security that a registration</p> <p>24 made through indianavoters.com is really the voter?</p> <p>25 A The authentication measures occur at the beginning</p>

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<p style="text-align: right;">Page 213</p> <p>1 and at the end of the process. The voter to access</p> <p>2 has to provide certain information that is not</p> <p>3 immediately available to persons other than the</p> <p>4 voter, such as their date of birth.</p> <p>5 And beyond that, when the voter registration</p> <p>6 application is received, the procedure is for the</p> <p>7 county voter registration office to review the</p> <p>8 application, approve it if it appears to be in</p> <p>9 order, and then to confirm before the application</p> <p>10 is finally approved by sending a notice by U.S.</p> <p>11 Mail to the address given on the application and</p> <p>12 waiting seven days to see if the U.S. Postal</p> <p>13 Service returns the confirmation notice as</p> <p>14 undeliverable. If it does so, then that</p> <p>15 application is rejected and not accepted for</p> <p>16 registration.</p> <p>17 Q What I meant was: When a voter signs into</p> <p>18 indianavoters, do they have to provide a user name,</p> <p>19 a password, a PIN, anything like that?</p> <p>20 A Yes. As I recall, there is an option for the voter</p> <p>21 to do a couple of things, and that is to enter in a</p> <p>22 password to restrict access to their voter</p> <p>23 registration record online by users of</p> <p>24 Indiana Voters Portal to themselves.</p> <p>25 Q I'm sorry. I think I missed in your answer. So</p>	<p style="text-align: right;">Page 215</p> <p>1 expect there to be some difference I think based on</p> <p>2 the experience of people with sight to their</p> <p>3 affixing the signature in the transaction I</p> <p>4 mentioned earlier. There are going to be some</p> <p>5 differences expected. Would it be reasonable to</p> <p>6 think that a blind person would perhaps have more</p> <p>7 variation? It seems reasonable in my layperson's</p> <p>8 opinion.</p> <p>9 Q Will any guidance be given to the counties on this</p> <p>10 signature match question?</p> <p>11 A Yes. We've already given guidance with regard to</p> <p>12 the signature mismatch requirements that were</p> <p>13 embodied in Senate Bill 398 to the counties at the</p> <p>14 conference that I mentioned earlier, and we would</p> <p>15 supplement that guidance as counties came forward</p> <p>16 with specific examples or questions.</p> <p>17 Q Was any of that guidance specific to the question</p> <p>18 of a voter with a print disability using a touch</p> <p>19 sensitive device or a computer mouse?</p> <p>20 A No, I don't recall that it was. Again, we did</p> <p>21 reference age and disability as being factors cited</p> <p>22 in the statute as a reason for accepting a</p> <p>23 signature that had an apparent variation.</p> <p>24 Q Okay. A voter with print disabilities as we've</p> <p>25 discussed is defined in part as an individual who</p>
<p style="text-align: right;">Page 214</p> <p>1 someone signing into indianavoters.com, are they</p> <p>2 assigned a user name or password or a PIN or</p> <p>3 anything like that?</p> <p>4 A No, I do not recall that they're assigned a user</p> <p>5 name or password.</p> <p>6 Q Do they assign one to themselves and register it?</p> <p>7 A I recall that the voter has the option to in</p> <p>8 essence require what's referred to as two-factor</p> <p>9 authentication so that subsequently only the voter</p> <p>10 has the information necessary to access the voter's</p> <p>11 record.</p> <p>12 Q Is two-factor a feature for everybody signing into</p> <p>13 indianavoters.com or is it optional?</p> <p>14 A No, it is an optional.</p> <p>15 Q I'm sorry. Can you say that again?</p> <p>16 A I said it's an optional feature.</p> <p>17 Q So yes, optional, okay.</p> <p>18 A Yes, optional.</p> <p>19 Q You said previously that elections officials are</p> <p>20 given some leeway in comparing the signature on the</p> <p>21 secrecy waiver to the signature on file. Do you</p> <p>22 expect signatures made by a blind user with a</p> <p>23 computer mouse to match the record on file in sort</p> <p>24 of a meaningful way?</p> <p>25 A Well, it's difficult to generalize, but I would</p>	<p style="text-align: right;">Page 216</p> <p>1 is unable to independently mark a paper ballot or</p> <p>2 ballot card due to a physical disability that</p> <p>3 impairs, among other things, manual dexterity. How</p> <p>4 can a voter with a physical disability that impairs</p> <p>5 manual dexterity create a signature using a</p> <p>6 computer mouse or touch sensitive device?</p> <p>7 A I would have difficulty answering that question</p> <p>8 because obviously each individual's degree of</p> <p>9 disability differs and in some cases it may be</p> <p>10 impossible for a voter to do that, but I don't</p> <p>11 think I can speculate in terms of how exactly that</p> <p>12 would work for voters with print disabilities as a</p> <p>13 group.</p> <p>14 Q If a voter lacks the manual dexterity necessary to</p> <p>15 complete a ballot, is it reasonable to assume that</p> <p>16 they also lack the manual dexterity necessary to</p> <p>17 create a signature by using a computer mouse?</p> <p>18 A I do not think that's reasonable to assume in all</p> <p>19 cases. Indiana law in Indiana Code 1-1-4 specifies</p> <p>20 that for the entire Indiana Code a signature or a</p> <p>21 signing is to be construed as making the voter's</p> <p>22 mark. And so in the case of voters who are not</p> <p>23 literate, that mark might be a simple X. And,</p> <p>24 again, under the general rules of statutory</p> <p>25 construction that apply throughout Indiana law, I</p>

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<p style="text-align: right;">Page 217</p> <p>1 would think that a mark made in the scenario you 2 describe could very well qualify as a signature for 3 purposes of the statute.</p> <p>4 Q Understanding that the purposes of this statute is 5 for voters with print disabilities, is it fair to 6 say that there's some population in Indiana that is 7 tetraplegic? That is to say that they are 8 paralyzed from the neck down?</p> <p>9 A I am certain that that is the case, yes.</p> <p>10 Q How will those voters use a computer mouse or 11 finger on a touch sensitive device to complete 12 their UOCAVA secrecy waivers?</p> <p>13 A That, I would not know. I hesitate to speculate. 14 But in the scenario you've described, if a voter 15 can use their mouth to move a pencil or other 16 device to make a mark, that seems to me to be a 17 possibility.</p> <p>18 Q To sign the secrecy waiver using a computer mouse 19 or printer on a touch sensitive device, is one of 20 the purposes of that so that they don't have to 21 print out a ballot using a printer?</p> <p>22 A I believe that would be correct.</p> <p>23 Q So in particular, a tetraplegic voter who operates 24 their computer either by voice commands, for 25 instance, with Dragon Naturally Speaking or with a</p>	<p style="text-align: right;">Page 219</p> <p>1 A That would be true as well.</p> <p>2 MS. ABSHIRE: Counsel, just to interrupt for a 3 second. By my count we're about half an hour away 4 from the seven-hour limit under Rule 30, so I 5 didn't know if you had a rough estimate of about 6 how much longer you expect the questioning to last.</p> <p>7 MS. BRANDT-YOUNG: A few minutes.</p> <p>8 MS. ABSHIRE: Great. Thank you. Sorry to 9 interrupt then.</p> <p>10 MS. BRANDT-YOUNG: Not at all. And, yes, I 11 have that we're at 6:26.</p> <p>12 Q So here's a question to state the obvious: E-mail 13 and fax UOCAVA voting only works for people who 14 have access to fax machines or computers and the 15 internet; right?</p> <p>16 A That would be correct.</p> <p>17 Q And they can do that either at home or somewhere 18 else where they have access to those things, like 19 perhaps a public library; is that right?</p> <p>20 A Yes, that's right.</p> <p>21 Q And voters without disabilities who vote via postal 22 mail don't have to have access to that equipment; 23 right? They can just receive their ballots by 24 mail, mark them with a pen or pencil, and mail them 25 back in; right?</p>
<p style="text-align: right;">Page 218</p> <p>1 mouse stylus as you're describing would not be able 2 to print out a ballot and pick it up for the 3 purposes of signing it with a pencil in their 4 mouths; right?</p> <p>5 A I hesitate to say that anything is impossible for 6 every conceivable voter. I recognize obviously it 7 is not an easy task, but, again, I can't presume 8 it's impossible.</p> <p>9 Q So once a voter has marked their ballot, they need 10 to submit it back to their county boards of 11 elections and under this program they can do so by 12 postal mail, fax, or e-mail; is that correct?</p> <p>13 A That's correct.</p> <p>14 Q In light of the passage of SEA 398, is there any 15 plan to change the technological requirements or 16 guidelines for use of fax machines in connection 17 with UOCAVA votes, understanding that there aren't 18 any right now?</p> <p>19 A No. The Election Division has no plans because 20 that really is the province of the 21 General Assembly.</p> <p>22 Q Okay.</p> <p>23 A It would be a policy decision for that body.</p> <p>24 Q Same for e-mail systems participating in the UOCAVA 25 voting program?</p>	<p style="text-align: right;">Page 220</p> <p>1 A That would be correct.</p> <p>2 Q Okay. So the next set of questions that I have for 3 you is about remote accessible vote by mail tools, 4 which I'm going to refer to as an RAVEM. Have you 5 ever heard that term before?</p> <p>6 A I don't believe I've heard that particular term, 7 no.</p> <p>8 Q So I'm thinking of tools like Democracy Live and 9 Five Cedars that enable a voter to mark their 10 ballot in an HTML computer-based system -- usually 11 HTML means a website -- and then to either submit 12 that ballot electronically online or depending on 13 their jurisdiction to mark that ballot on their 14 computer and then print it out, sign whatever needs 15 signing, and mail it in. So are you familiar with 16 systems like that?</p> <p>17 A No, not particularly. I've heard, of course, of 18 some of the systems that you've mentioned, but no, 19 I'm not familiar with the detailed workings.</p> <p>20 Q So fair to say that you've heard of them?</p> <p>21 A That would be fair.</p> <p>22 Q Fair to say that they're used in other states?</p> <p>23 A That is true, to my understanding.</p> <p>24 Q Has the Indiana Election Division ever considered 25 using an RAVEM in Indiana?</p>

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<p style="text-align: right;">Page 221</p> <p>1 A No, not to my knowledge.</p> <p>2 Q Why not?</p> <p>3 A I do not know why not. No one has raised the issue</p> <p>4 in any conversation that I've been a participant</p> <p>5 in.</p> <p>6 Q In so far as an RAVEM would enable a voter to mark</p> <p>7 a ballot in a WCAG-compliant way and then submit it</p> <p>8 to their election board either electronically or by</p> <p>9 printing it out and mailing it or printing it out</p> <p>10 and attaching it to an e-mail or a fax, have RAVEMs</p> <p>11 ever been considered for inclusion in the UOCAVA</p> <p>12 process pursuant to SEA 398?</p> <p>13 A No, not to my knowledge.</p> <p>14 Q Why not?</p> <p>15 A Again, I do not know why not. I did not</p> <p>16 participate in any conversation where anyone has</p> <p>17 raised that particular option or issue.</p> <p>18 Q In an HTML voting system it's possible to separate</p> <p>19 every race in the election onto a separate HTML</p> <p>20 page. Do you agree with that?</p> <p>21 A I don't have sufficient knowledge to answer the</p> <p>22 question.</p> <p>23 Q Do you agree that in every election generally</p> <p>24 there's usually more than one race being decided</p> <p>25 that the voter must either make an election or</p>	<p style="text-align: right;">Page 223</p> <p>1 Q I'm also going to represent to you that you can set</p> <p>2 up alerts on each race that tell people if they</p> <p>3 have voted for too many candidates or not enough</p> <p>4 candidates, informing them that they've made that</p> <p>5 mistake. An alert will pop up not permitting you</p> <p>6 to go to the next page until you've dealt with the</p> <p>7 alert. Does that make sense?</p> <p>8 A Yes, I understand.</p> <p>9 Q Is it fair to say that preventing mistakes in that</p> <p>10 way is generally a good thing?</p> <p>11 A Yes, certainly. There are other voting systems</p> <p>12 that have applied for certification in Indiana and</p> <p>13 been certified that have software that makes it</p> <p>14 physically impossible to vote for more than one</p> <p>15 candidate in a particular race. I'm referring, of</p> <p>16 course, to the direct record electronic voting</p> <p>17 systems, which will not so much send an error</p> <p>18 message as physically prevent you from registering</p> <p>19 an over-vote.</p> <p>20 Q So compared to a paper ballot where you don't have</p> <p>21 those choices, is it fair to say that an RAVEM</p> <p>22 might be configured so as to promote more accurate</p> <p>23 voting?</p> <p>24 MS. ABSHIRE: Objection to the extent it calls</p> <p>25 for speculation.</p>
<p style="text-align: right;">Page 222</p> <p>1 decide not to make an election on?</p> <p>2 A That is almost always true.</p> <p>3 Q And is it fair to say that sometimes voters make</p> <p>4 mistakes filling out their ballots by either voting</p> <p>5 for too many candidates in a single race or not</p> <p>6 enough candidates in a single race?</p> <p>7 A Yes. Voters engage in those activities either by</p> <p>8 mistake or on occasion deliberately.</p> <p>9 Q And as we said previously, a ballot is a complex</p> <p>10 document; right?</p> <p>11 A Yes.</p> <p>12 Q And that can lead to mistakes; right?</p> <p>13 A Yes.</p> <p>14 Q I'm going to represent to you that in an HTML RAVEM</p> <p>15 a choice that can be made is to separate every</p> <p>16 different race onto its own HTML page so that the</p> <p>17 voter makes their selections for that single race</p> <p>18 and then presses a button to go on to the next</p> <p>19 race. That's what I mean by a single race on a</p> <p>20 single page.</p> <p>21 A Okay.</p> <p>22 Q You're familiar with the concept in terms of</p> <p>23 filling out internet forms?</p> <p>24 A I understand at least theoretically what you're</p> <p>25 describing, yes.</p>	<p style="text-align: right;">Page 224</p> <p>1 A I would think that would be a fair conclusion.</p> <p>2 Q Would a system like that qualify as a voting system</p> <p>3 that has to be certified as a voting system in</p> <p>4 Indiana if it were run by an outside company like</p> <p>5 Democracy Live or Five Cedars?</p> <p>6 A The Indiana statute on voting systems, as I</p> <p>7 referenced earlier, is modeled on the definition of</p> <p>8 voting systems in the Help America Vote Act and</p> <p>9 it's a rather lengthy and I think fairly</p> <p>10 comprehensive definition. There are individuals</p> <p>11 who argue that electronic poll books should be</p> <p>12 included in that definition but are not.</p> <p>13 And I would say I would begin with the</p> <p>14 presumption that the type of voting system you're</p> <p>15 describing, which, again, I'm relying on your</p> <p>16 representations to understand it, would involve a</p> <p>17 certification requirement by the State, and to this</p> <p>18 date the Indiana Election Commission has not</p> <p>19 received an application for certification from a</p> <p>20 vendor of such a system.</p> <p>21 Q If the State of Indiana wanted to develop its own</p> <p>22 program for developing an HTML ballot marking</p> <p>23 system, would that require certification?</p> <p>24 MS. ABSHIRE: Objection to the extent it calls</p> <p>25 for a legal conclusion.</p>

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<p style="text-align: right;">Page 225</p> <p>1 A It's difficult to answer that question because the 2 certification law is based on the assumption that 3 the private sector rather than the public sector 4 will be developing voting systems for marketing and 5 use in Indiana. If I were to examine the statute, 6 I believe I would have to determine whether or not 7 the State itself qualifies as a vendor, and that 8 doesn't really seem to fit the common understanding 9 of that term. So I would have to say I don't have 10 a firm opinion on the answer to that question, but 11 I am skeptical that the State would have to apply 12 to itself to be certified.</p> <p>13 Q Okay. And has the IED or SOS ever considered 14 developing an HTML-based system to enable UOCAVA 15 voters with print disabilities to mark their 16 ballots in order to comply with SEA 398?</p> <p>17 A No, not to my knowledge.</p> <p>18 Q Why not?</p> <p>19 A Again, I have no idea. It's not been a question 20 raised in any conversation that I've been involved 21 in.</p> <p>22 Q Has anyone determined that that would create a 23 fundamental alteration in the voting program?</p> <p>24 A The Election Division certainly has not made that 25 determination.</p>	<p style="text-align: right;">Page 227</p> <p>1 completed is, among other things, the policy that 2 is Exhibit 7; is that correct?</p> <p>3 A Yes. If you'll remind me about Exhibit 7's 4 identity, the number doesn't immediately resonate.</p> <p>5 Q The one that we looked at most recently.</p> <p>6 A Yes, yes. Thank you.</p> <p>7 Q So development of the policy is done?</p> <p>8 A Yes.</p> <p>9 Q In terms of compliance, some of the things that 10 remain to be done are -- and tell me if I have this 11 list correct -- to create and test the FVAP-like 12 form, the secrecy waiver, and the bill of rights 13 for compliance with WCAG. Is that correct?</p> <p>14 A Yes, that's correct.</p> <p>15 Q And another thing that is left to be done is to 16 provide guidance to the counties on how the ballots 17 and the local instructions must also comply with 18 WCAG. That's something that's left to be done?</p> <p>19 A Yes, that's correct.</p> <p>20 Q And possibly another thing that's left to be done 21 is to find contractors to assist the counties with 22 that ballot compliance with WCAG; is that correct?</p> <p>23 A Yes, that's correct.</p> <p>24 Q And another thing that's left to be done is to 25 create the educational component for the county</p>
<p style="text-align: right;">Page 226</p> <p>1 Q Has anyone made a determination that that would 2 constitute an undue administrative burden?</p> <p>3 A No, not to my knowledge. Certainly not the 4 Election Division.</p> <p>5 Q Has anyone made a determination that that would 6 constitute an undue financial burden?</p> <p>7 A No. Again, not to my knowledge and certainly not 8 the Election Division.</p> <p>9 MS. BRANDT-YOUNG: At this moment, Counsel, 10 I'm hoping we can take a short break. Would 11 ten minutes be okay?</p> <p>12 MS. ABSHIRE: That's fine.</p> <p>13 MS. BRANDT-YOUNG: Great. So it's now 5:34. 14 We'll take a ten-minute break and we'll see you at 15 5:45. Okay?</p> <p>16 MS. ABSHIRE: Sounds good.</p> <p>17 MS. BRANDT-YOUNG: Thank you very much.</p> <p>18 THE WITNESS: Thank you.</p> <p>19 (A brief recess was taken.)</p> <p>20 (Ms. Robaidek left the deposition at this 21 time.)</p> <p>22 Q All right. So, Mr. King, I think we're very close 23 to being done, on a number of measures, so to 24 speak. So thinking about the State of Indiana's 25 compliance with SEA 398 so far, what's done and</p>	<p style="text-align: right;">Page 228</p> <p>1 boards of elections around including voters with 2 print disabilities in the UOCAVA program generally, 3 including updating materials; is that correct?</p> <p>4 A Yes, that would be correct.</p> <p>5 Q And another thing that's probably left to be done 6 honestly is to have presentations and meetings to 7 educate them and answer questions about those same 8 things; is that right?</p> <p>9 A Yes, that's right.</p> <p>10 Q Also fair to assume that the county boards 11 themselves will need to hold trainings with their 12 staff in order to make sure that everyone is fully 13 apprised of the requirements of this law; is that 14 right?</p> <p>15 A Yes. I think that would be correct, yes.</p> <p>16 Q And theoretically something that could be done to 17 comply with this law is to edit the policy that is 18 Exhibit 7 to reflect that in the form impacts 19 section ballots and county-specific instructions 20 will need to be developed. That's something that 21 could be done; is that right?</p> <p>22 A Yes, that's right, that's correct.</p> <p>23 Q And also in Section 1.10 of that policy it could 24 reflect that the bill of rights, the ballots, and 25 any local county instructions need to be compliant</p>

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<p style="text-align: right;">Page 229</p> <p>1 with WCAG and to have WCAG testing. That's</p> <p>2 something that could be done; right?</p> <p>3 A Yes, that's right.</p> <p>4 Q Is there anything else that needs to be done in</p> <p>5 order to implement the provisions of SEA 398 that</p> <p>6 apply to voters with print disabilities?</p> <p>7 A I think your list has been comprehensive. As I</p> <p>8 think about it at this point, no, I can't think of</p> <p>9 anything else additional.</p> <p>10 I would add that we do have the opportunity on</p> <p>11 a regularly-scheduled basis to meet with the</p> <p>12 circuit court clerks who perform the work of the</p> <p>13 county election board in most counties and advise</p> <p>14 them in different parts of the state. Those</p> <p>15 opportunities will be coming up prior to the May</p> <p>16 primary.</p> <p>17 Q So at the current time when do you anticipate that</p> <p>18 all the necessary work to implement SEA 398 as it</p> <p>19 applies to voters with print disabilities will be</p> <p>20 complete?</p> <p>21 A I would be hopefully optimistic and say the March</p> <p>22 build component for our Statewide Voter</p> <p>23 Registration System election management module is</p> <p>24 probably the single most important deadline date</p> <p>25 for us to meet, and so that would be my</p>	<p style="text-align: right;">Page 231</p> <p>1 implement SEA 398 as it applies to voters with</p> <p>2 print disabilities that you think is important that</p> <p>3 we haven't already discussed?</p> <p>4 A No, not at this point. Nothing comes to mind as I</p> <p>5 think through it.</p> <p>6 MS. BRANDT-YOUNG: In that case we'd have no</p> <p>7 further questions at this time. Ms. Abshire, is</p> <p>8 there any redirect?</p> <p>9 MS. ABSHIRE: How do I sound? Can you hear me</p> <p>10 clearly?</p> <p>11 MS. BRANDT-YOUNG: I can hear you very</p> <p>12 clearly. Thank you.</p> <p>13 MS. ABSHIRE: Okay. Great. I do have a few</p> <p>14 questions. I don't think it will take very long if</p> <p>15 you're okay with me getting started.</p> <p>16 MS. BRANDT-YOUNG: Please do.</p> <p>17 CROSS-EXAMINATION</p> <p>18 BY MS. ABSHIRE:</p> <p>19 Q Okay. Brad, so you mentioned earlier that a</p> <p>20 traveling board can help a voter vote up to</p> <p>21 twelve days before the date of the election. Did</p> <p>22 you actually mean nineteen days?</p> <p>23 A Oh, yes. That reflects a recent change in Indiana</p> <p>24 law. For many years the period for absentee travel</p> <p>25 boards was twelve days and I believe -- the years</p>
<p style="text-align: right;">Page 230</p> <p>1 expectation.</p> <p>2 Q Is that something I failed to list previously, that</p> <p>3 getting Indiana voters to have an online accessible</p> <p>4 absentee ballot application is one of the tasks</p> <p>5 remaining?</p> <p>6 A I believe that that would be correct.</p> <p>7 Q Okay.</p> <p>8 A I also mentioned the March build in reference to</p> <p>9 the fact that our General Assembly is scheduled to</p> <p>10 adjourn no later than middle of March, may adjourn</p> <p>11 before that, and so if they make any changes to the</p> <p>12 current text of 398 that would be a necessary</p> <p>13 component as part of our education of the county</p> <p>14 election boards.</p> <p>15 Q At the current time are you aware of any plans to</p> <p>16 go to the legislature to suggest any changes?</p> <p>17 A No, not specifically with regard to this issue on</p> <p>18 voters with print disabilities. The legislature,</p> <p>19 as I indicated, has officially convened for an</p> <p>20 organization day last month but will not return</p> <p>21 until the first week of January, and so there are</p> <p>22 election-related bills being prepared by any number</p> <p>23 of the 150 legislators but I'm not aware of</p> <p>24 anything particularly on this point.</p> <p>25 Q Is there anything else about the State's plans to</p>	<p style="text-align: right;">Page 232</p> <p>1 run together with the impact of the COVID</p> <p>2 lockdowns -- but I believe it was in 2019 that that</p> <p>3 was extended from twelve days to nineteen.</p> <p>4 Q Caring for confined individuals during the entire</p> <p>5 twelve hours the polls are open is one of the</p> <p>6 categories that qualifies a voter to vote absentee</p> <p>7 by mail; is that correct?</p> <p>8 A Yes, that's correct.</p> <p>9 Q Does the Indiana Election Division have authority</p> <p>10 to remove an election county official?</p> <p>11 A No.</p> <p>12 Q You discussed the language in the Indiana</p> <p>13 Election Administrator's Manual about how traveling</p> <p>14 board appointments are limited. Is one of the</p> <p>15 purposes of including that language to remind</p> <p>16 county election officials to not wait until the</p> <p>17 last minute to schedule appointments?</p> <p>18 A I think that may very well be a purpose. I've not</p> <p>19 heard it expressed, but in working with clerks I</p> <p>20 know that they have to plan well in advance of</p> <p>21 election day -- they are, of course, already</p> <p>22 planning for elections in 2022 -- and so that seems</p> <p>23 like a logical rationale for them.</p> <p>24 Q Switching gears. You generally discussed security</p> <p>25 of e-mail transmission of ballots. Do counties use</p>

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<p style="text-align: right;">Page 233</p> <p>1 a threat intelligence service to protect against, 2 for example, cyber attacks or malware?</p> <p>3 A I am familiar that many counties use the FireEye 4 system as a cyber security resource not just for 5 elections but for all county offices involving all 6 sorts of other county business. That would be the 7 one that comes to mind.</p> <p>8 Q Do you know if every county uses FireEye?</p> <p>9 A I do not know if every county uses FireEye. I do 10 know that there were some that were very reluctant 11 to enter into agreements with FireEye and, as I 12 recall, legislature mandated that all counties do 13 so. I assume that they complied with that 14 legislative mandate.</p> <p>15 Q Do you recall discussing earlier about a \$6,475 16 line item designation in federal funds in an 17 exhibit, what federal funds those came from?</p> <p>18 A Yes, I do.</p> <p>19 Q Do you have any clarity to provide about the answer 20 that you gave earlier?</p> <p>21 A Yes, I do. My counsel, Valerie Warycha, contacted 22 Zachary Jackson, the State budget agency director, 23 who advised her that the document that was 24 displayed was, in fact, not an indication of 25 appropriate or available funds but instead an</p>	<p style="text-align: right;">Page 235</p> <p>1 A I can explain it in general terms without referring 2 to it. It is not specifically referencing FireEye 3 but requires counties to enter into cyber security 4 agreements that contain comprehensive cyber 5 security protections that apply to all offices 6 throughout the county with databases that contain 7 sensitive subject matter, whether that would be the 8 voter registration system but beyond that property 9 tax records, financial records, deeds, etc., and so 10 that the same umbrella of protection that is 11 afforded to the voter registration office is made 12 available to the county recorder, the county 13 auditor, etc. So I hope that's a general 14 explanation.</p> <p>15 Q Yes. Thank you. Do you happen to recall the 16 citation for the statute off the top of your head?</p> <p>17 A Oh, I know it's in Title 3. No, I'm sorry, I don't 18 off the top of my head. We generally have 19 miscellaneous provisions in 3-5-4 and so that would 20 be the first place I would look, but I would have 21 to do further research to give you an answer on 22 that.</p> <p>23 Q And you said that all offices in county government 24 would have to comply with that rule? Do I 25 understand that correctly?</p>
<p style="text-align: right;">Page 234</p> <p>1 estimate that was prepared by the budget agency 2 staff and in the short period of time he had to 3 discuss it without doing further research indicated 4 that staffers would routinely carry over an amount 5 estimated for federal funds that were present at 6 some point in a previous budget but that there 7 were, in fact, no real dollars there of federal 8 funding.</p> <p>9 Q So the division did not receive \$6,475 appropriated 10 from federal funds?</p> <p>11 A In fact, no, that is correct.</p> <p>12 MS. ABSHIRE: Okay. That's all the questions 13 I have, Counsel.</p> <p>14 MS. BRANDT-YOUNG: All right. Could we please 15 take a quick break and then we'll reconvene in 16 five minutes?</p> <p>17 MS. ABSHIRE: That's fine.</p> <p>18 MS. BRANDT-YOUNG: Thank you.</p> <p>19 (A brief recess was taken.)</p> <p>20 REDIRECT EXAMINATION</p> <p>21 BY MS. BRANDT-YOUNG:</p> <p>22 Q So, sir, just a few follow-up questions on what you 23 just explained. In terms of FireEye, can you 24 explain the statute that requires counties to 25 contract with FireEye?</p>	<p style="text-align: right;">Page 236</p> <p>1 A All counties have to comply with that rule. In 2 general, the county commissioners serve as the 3 county executive and have control over various 4 agencies and offices that are either separately 5 elected or appointed by the county commissioners, 6 and so the county commissioners as county executive 7 enter into the required contract that covers the 8 offices I described.</p> <p>9 Q I understand that voter registration databases 10 would be covered by the agreements and contracts at 11 issue here. Would this cover the sort of 12 electronic operations of the county board of 13 elections generally beyond the database itself?</p> <p>14 A Yes, that's my understanding.</p> <p>15 Q Would it be possible to suggest to the legislature 16 that a similar law be passed requiring each county 17 to enter into an agreement with the Secretary of 18 State to use a company that could assist them in 19 making their electronic communications WCAG 20 compliant?</p> <p>21 MS. ABSHIRE: Objection to the extent it calls 22 for speculation.</p> <p>23 A I would say certainly the answer is yes, it is 24 possible for any individual or entity to speak to a 25 State Senator or State Representative to ask the</p>

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<p style="text-align: right;">Page 237</p> <p>1 idea be brought forward for consideration by the</p> <p>2 General Assembly, yes.</p> <p>3 Q Is any reporting required under the statute?</p> <p>4 MS. ABSHIRE: Objection. Vague.</p> <p>5 A Are you referring to the statute referencing</p> <p>6 FireEye or some other statute?</p> <p>7 Q Thank you. The statute that requires each county</p> <p>8 to enter into an agreement with the Secretary of</p> <p>9 State to use a threat intelligence and enterprise</p> <p>10 security company designated by the Secretary of</p> <p>11 State, is there any reporting requirement that</p> <p>12 counties must do?</p> <p>13 A I don't recall any reporting requirement in the</p> <p>14 statute itself. I know that the Secretary of</p> <p>15 State's office monitored which counties had, in</p> <p>16 fact, entered into the contracts and provided</p> <p>17 information to the General Assembly regarding</p> <p>18 counties which had not for whatever reason.</p> <p>19 MS. BRANDT-YOUNG: Plaintiffs make a request</p> <p>20 for that report, which we understand will be within</p> <p>21 the control of the Secretary of State, and all</p> <p>22 associated correspondence with the legislature</p> <p>23 about it.</p> <p>24 Q Is there anything else about that statute that you</p> <p>25 think is important and applicable to any of the</p>	<p style="text-align: right;">Page 239</p> <p>1 UNITED STATES DISTRICT COURT</p> <p>2 SOUTHERN DISTRICT OF INDIANA</p> <p>3 INDIANAPOLIS DIVISION</p> <p>4 AMERICAN COUNCIL OF THE)</p> <p>5 BLIND OF INDIANA,)</p> <p>6 INDIANA PROTECTION AND)</p> <p>7 ADVOCACY SERVICES COMMISSION,))</p> <p>8 KRISTIN FLESCHNER,)</p> <p>9 RITA KERSH, AND)</p> <p>10 WANDA TACKETT,)</p> <p>11)</p> <p>12 Plaintiffs,)</p> <p>13)</p> <p>14 -v-) CAUSE NO.</p> <p>15) 1:20-cv-3118-JMS-MJD</p> <p>16)</p> <p>17 INDIANA ELECTION COMMISSION;)</p> <p>18 THE INDIVIDUAL MEMBERS OF THE)</p> <p>19 INDIANA ELECTION COMMISSION,)</p> <p>20 IN THEIR OFFICIAL CAPACITIES;))</p> <p>21 INDIANA SECRETARY OF STATE,)</p> <p>22 IN HER OFFICIAL CAPACITY; THE)</p> <p>23 INDIANA ELECTION DIVISION;)</p> <p>24 AND THE CO-DIRECTORS OF THE)</p> <p>25 INDIANA ELECTION DIVISION, IN))</p> <p>THEIR OFFICIAL CAPACITIES,)</p> <p>Defendants.)</p> <p>Job No. 167733</p> <p>The Zoom 30(b)(6) deposition of the</p> <p>Indiana Election Division upon oral examination of</p> <p>BRADLEY KING, taken in the above-captioned matter, on</p> <p>December 16, 2021, and at the time and place set out</p> <p>on the title page hereof.</p> <p>It was requested that the deposition be</p> <p>transcribed by the reporter and that same be reduced</p> <p>to typewritten form.</p> <p>It was agreed that the reading and signature</p> <p>by the deponent to the deposition were waived on</p> <p>behalf of the parties plaintiff and defendant by their</p> <p>respective counsel, the witness being present and</p> <p>consenting thereto, the deposition to be read with the</p> <p>same force and effect as if signed by said deponent.</p>
<p style="text-align: right;">Page 238</p> <p>1 things that we've discussed today?</p> <p>2 A No. I cannot think of anything else in addition to</p> <p>3 what we've discussed.</p> <p>4 MS. BRANDT-YOUNG: Okay. The plaintiffs have</p> <p>5 no further questions for today. We are very</p> <p>6 grateful to you, sir, for explaining all of these</p> <p>7 things to us, and we look forward to seeing you</p> <p>8 again on Monday.</p> <p>9 THE WITNESS: You're very welcome. Thank you.</p> <p>10 MS. BRANDT-YOUNG: Excellent. So I believe we</p> <p>11 can go off the record, Michele.</p> <p>12 THE REPORTER: Okay.</p> <p>13 (A discussion was held off the record.)</p> <p>14 THE REPORTER: What kind of copies of the</p> <p>15 transcript today would you both like?</p> <p>16 MS. BRANDT-YOUNG: Plaintiffs will take an</p> <p>17 electronic transcript.</p> <p>18 MS. ABSHIRE: Defendants are good with</p> <p>19 electronic.</p> <p>20 THE REPORTER: All right. Thank you.</p> <p>21 (Exhibits 1-7 were marked.)</p> <p>22 (The deposition concluded at 6:20 p.m.)</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 240</p> <p>1 STATE OF INDIANA</p> <p>2 COUNTY OF MARION</p> <p>3 I, Michele K. Gustafson, CRR-RPR, a</p> <p>4 Notary Public in and for said county and state, do</p> <p>5 hereby certify that the deponent herein was by me</p> <p>6 first duly sworn to tell the truth, the whole truth,</p> <p>7 and nothing but the truth in the aforementioned</p> <p>8 matter;</p> <p>9 That the foregoing deposition was taken on</p> <p>10 behalf of the Plaintiffs; that said deposition was</p> <p>11 taken at the time and place heretofore mentioned</p> <p>12 between 10:00 a.m. and 6:20 p.m.;</p> <p>13 That said deposition was taken down in</p> <p>14 stenograph notes and afterwards reduced to typewriting</p> <p>15 under my direction; and that the typewritten</p> <p>16 transcript is a true record of the testimony given by</p> <p>17 said deponent;</p> <p>18 And that the reading and signature by the</p> <p>19 deponent to the deposition were waived on behalf of</p> <p>20 the parties plaintiff and defendant by their</p> <p>21 respective counsel, the witness being present and</p> <p>22 consenting thereto, the deposition to be read with the</p> <p>23 same force and effect as if signed by said deponent.</p> <p>24</p> <p>25</p>

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1 I do further certify that I am a disinterested
2 person in this cause of action; that I am not a
3 relative of the attorneys for any of the parties.

4 IN WITNESS WHEREOF, I have hereunto set my
5 hand and affixed my notarial seal this 4th day of
6 January, 2022.

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14 My Commission expires:

August 31, 2025

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Job No. 167733

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